

**UNDERCOVER STOREFRONT OPERATIONS: CONTINUED  
OVERSIGHT OF ATF'S RECKLESS INVESTIGATIVE  
TECHNIQUES**

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**HEARING**

BEFORE THE

**COMMITTEE ON OVERSIGHT  
AND GOVERNMENT REFORM  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED THIRTEENTH CONGRESS**

SECOND SESSION

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## CONTENTS

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Hearing held on April 2, 2014 .....	Page 1
WITNESSES	
B. Todd Jones, Director, Bureau of Alcohol, Tobacco, Firearms and Explosives	
Oral Statement .....	5
Written Statement .....	8
APPENDIX	
Opening Statement of Chairman Issa .....	58
Opening Statement of Rep. Cummings .....	62
April 1, 2014, letter to the committee by the Federal Law Enforcement Officers Association, submitted by Rep. Cummings .....	64
April 1, 2014 letter to ATF from Josephine Terry, submitted by Chairman Issa .....	66
December 12, 2013, letter to Attorney General Holder from The Arc, sub- mitted by Chairman Issa .....	69
U.S. DOJ “Report on Operation Fearless and Related Matters,” submitted by Rep. Chaffetz .....	73
April 1, 2014, letter to Chairman Issa from U.S. DOJ, submitted by Rep. Gosar .....	78
Follow up questions and answers from U.S. DOJ .....	83



## **UNDERCOVER STOREFRONT OPERATIONS: CONTINUED OVERSIGHT OF ATF'S RECK- LESS INVESTIGATIVE TECHNIQUES**

**Wednesday, April 2, 2014,**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,  
WASHINGTON, D.C.

The committee met, pursuant to notice, at 9:30 a.m. in room 2154, Rayburn House Office Building, the Honorable Darrell Issa [chairman of the committee], presiding.

Present: Representatives Issa, Mica, Turner, Jordan, Chaffetz, Amash, Gosar, Meehan, DesJarlais, Farenthold, Massie, Collins, Meadows, Bentivolio, DeSantis, Cummings, Maloney, Norton, Tierney, Clay, Connolly, Speier, Duckworth, Kelly, and Grisham.

Staff Present: Jen Barblan, Majority Senior Counsel; Molly Boyd, Majority Deputy General Counsel and Parliamentarian; Lawrence J. Brady, Majority Staff Director; Lawrence J. Brady, Majority Staff Director; Ashley H. Callen, Majority Deputy Chief Counsel for Investigations; Sharon Casey, Majority Senior Assistant Clerk; Steve Castor, Majority General Counsel; John Cuaderes, Majority Deputy Staff Director; Carlton Davis, Majority Senior Counsel; Adam P. Fromm, Majority Director of Member Services and Committee Operations; Linda Good, Majority Chief Clerk; Tyler Grimm, Majority Senior Professional Staff Member; Christopher Hixon, Majority Chief Counsel for Oversight; Mark D. Marin, Majority Deputy Staff Director for Oversight; Ashok M. Pinto; Majority Chief Counsel, Investigations; Andrew Rezendes, Majority Counsel; Laura Rush, Majority Deputy Chief Clerk; Jessica Seale, Majority Digital Director; Jonathan J. Skladany, Majority Deputy General Counsel; Peter Warren, Majority Legislative Policy Director; Rebecca Watkins, Majority Communications Director; Aryele Bradford, Minority Press Secretary; Jennifer Hoffman, Minority Communications Director; Peter Kenny, Minority Counsel; Elisa Lannier, Minority Director of Operations; Juan McCullum, Minority Clerk; Dave Rapallo, Minority Staff Director; and Valerie Shen, Minority Counsel.

Chairman ISSA. The committee will come to order.

The Oversight Committee exists to secure two fundamental principles. First, Americans have the right to know that the money Washington takes from them is well spent. Second, Americans deserve an efficient and effective government that works for them.

Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold gov-

ernment accountable to taxpayers because taxpayers have a right to know what they are getting from the government.

Our job is to work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy.

Without objection, the Chair is authorized to declare recesses of the committee at any time.

Today's witness, Mr. B. Todd Jones, took over as the head of the ATFE as Acting Director and later as the first Director in the wake of Operation Fast and Furious and the scandal that surrounded it.

His mission was to change the culture at ATF and move the agency in the right direction. This was no small task. Two and a half years into his tenure, it is safe to say the ATF still has a long way to go.

Just over a year ago in Milwaukee, the Milwaukee Journal Sentinel reported on Operation Fearless, an undercover, storefront operation conducted by the Alcohol, Tobacco and Firearms in Milwaukee, Wisconsin during the Director's tenure.

Everything about Operation Fearless was wrong. ATF agents allowed convicted felons to leave the store armed and dangerous. Three weapons, including a machine gun, I repeat, not a semiautomatic weapon often called a machine gun, a machine gun was stolen from an ATF vehicle.

The storefront was burglarized and \$39,000 worth of merchandise was stolen all because the ATF neglected to install an alarm system. ATF exploited a mentally handicapped person with an IQ in the mid 50s to assist in the storefront operation and then arrested this poor limited capacity individual for his involvement.

When we learned about this, Chairman Goodlatte, Chairman Sensenbrenner, Senate Ranking Member Grassley and I immediately wrote the ATF requesting more information. Only after receiving our letter did the Director that day order an internal review, even though ATF management was aware of all the operation problems.

In April 2013, ATF briefed committee staff on this operation. ATF assured us that the botched operation was "an isolated incident." In December 2013, however, we learned that ATF mismanaged similar undercover operations across the country stretching from Portland, Oregon to Albuquerque to Wichita to Atlanta to Pensacola, Florida.

These other storefront operations followed an incredibly reckless pattern. Agents allowed felons to leave the store with weapons, agents exploited mentally handicapped people and agents failed to take precautions to protect the stores from theft.

ATF's dangerous tactics may actually be increasing crime in your neighborhood. When ATF undertook these operations they do not inspire public confidence. Rather, they make America wonder if ATF is a reliable partner to keep the streets safe.

The Milwaukee operation, Fearless, was part of the ATF's Monitored Case Program. The Monitored Case Program was created after Operation Fast and Furious to ensure careful oversight of field operations from ATF headquarters. Unfortunately, it is clear that in the case of Operation Fearless, the Monitored Case Program failed and failed miserably.

Today's hearing will explore whether other cases are slipping through the cracks at ATF even though Monitored Case programs exist to prevent just that. Effective leadership requires accountability. Accountability ensures that mistakes are not repeated.

Three years after the death of Border Patrol Agent Brian Terry, ATF has yet to fire anybody for their roles in Operation Fast and Furious. I personally find that inexcusable. Today, we will learn whether ATF has held any employees accountable for dangerous, mismanaged Operation Fearless.

We have been down this path before. ATF has promised to change its culture, implement new policies and procedures and hold agents accountable for their actions. What good are these new policies and procedures if they too fail? What good are promises of accountability if the accountability never occurs? What message does it send to the hard working ATF agents who get it right? You can be reckless and jeopardize public safety in furtherance of your investigation but you will not be disciplined or certainly not fired.

The Director now faces the difficult task of moving the agency forward from its most recent scandal and hopefully, finally, restoring integrity to the ATF.

I now recognize the Ranking Member for his opening statement.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

I would like to welcome today's witness, the Honorable B. Todd Jones, who was confirmed and sworn in last summer as the Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives.

For seven years, since 2006, the ATF did not have a Senate-confirmed Director. I welcomed Director Jones' confirmation and I know he has been extremely busy addressing many of the Bureau's problems and challenges that he inherited.

ATF plays a critical role in enforcing our Nations firearms laws and combating illegal firearms trafficking and other crimes. Its agents, investigators and support staff work to protect the American people from gun violence that has ravaged communities across the country and, as a matter of fact, has ravaged the very community that I have lived in for the last 32 years.

ATF personnel played a key role in responding to the Navy Yard shooting, the Boston Marathon bombing, the Sandy Hook tragedy and the Aurora movie theater attacks. In the words of Chairman Issa, I want to thank all of those ATF agents publicly right now who get it right.

Given the inherent dangers associated with conducting operations that target violent criminal organizations, the ATF must take on a certain degree of risk. Our hearing today is focused on ensuring that the Bureau properly manages this risk while protecting the safety of its personnel and especially the surrounding communities.

Today, we will hear about one type of operation, the undercover storefront. The ATF officials explained that the Bureau has used this investigative technique successfully over many years. By working deep inside communities that are being terrorized by violent gangs and drug cartels, ATF agents contend that they have been able to make a significant difference for the residents of these various neighborhoods.

I am hoping that during his testimony this morning the Director will explain to us exactly what is so special about these types of programs and why are they required to get to certain types of problems.

Over the last year, however, there have been numerous allegations involving storefront operations in several cities. In January 2013, the Milwaukee Journal Sentinel reported that an undercover storefront operation in Milwaukee purchased weapons at above market prices, including weapons that were recently purchased at retail outlets.

It also reported that three ATF-issued firearms were stolen from the trunk of an agent's vehicle, including an automatic weapon that was never recovered. It was also reported that some defendants were incorrectly identified and charged and that the operation netted primarily low level individuals on firearms and drug charges.

Last December, the Journal Sentinel highlighted additional allegations in five cities: Albuquerque, Atlanta, Pensacola, Portland and Wichita. According to these reports, some of these operations allegedly targeted individuals with mental disabilities. One operation was located near a school and some others allowed felons to leave the premises with firearms they brought into the store.

I understand that as soon as these press reports came out, then Acting Director Jones order the Bureau's Office of Professional Responsibility and Security Operations to fully investigate these allegations. Last March, this office issued a detailed report that found many deficiencies with these operations.

According to the report, "These deficiencies caused a loss of property, created risk to the public and officer safety and led to the improper arrest of four individuals." The report found that "The absence of comprehensive written guidelines and best practices for the operation of an under cover storefront was a contributing factor in many of the deficiencies in Operation Fearless."

It also found that the primary cause of deficiencies not being identified and corrected was the failure of the case agent and the first-line supervisors to report those problems.

I am hopeful that Director Jones will address the issue of accountability and the issue of people reporting up. We found in Fast and Furious there were some issues with that. The question becomes has that been corrected.

In response to these findings, Director Jones and ATF prepared a comprehensive manual incorporating lessons learned from the Milwaukee operation and best practices from many other successful storefront operations. The Bureau will also require a personal briefing between agents and ATF headquarters, as well as on-site inspections of the storefronts.

As I close, I hope that the committee will hear more today about ATF's responses to the serious allegations, the reforms that ATF has implemented and additional measures ATF can take to have safety in high risk operations.

ATF certainly has had its share of problems over the years. Our focus today should be one ensuring that the agency continues its path towards reform. I understand the Department of Justice In-



spector General is also investigating the Milwaukee operation and I hope we can obtain the results of that review soon as well.

Finally, Mr. Chairman, I ask unanimous consent to place in the record a letter sent to the committee yesterday from the Federal Law Enforcement Officers Association.

Chairman ISSA. Without objection, so ordered.

Mr. CUMMINGS. I yield, Mr. Chairman.

Chairman ISSA. The gentleman yields back.

Members may have seven days in which to submit opening statements for the record.

I now ask unanimous consent that the letter sent yesterday to ATF by Brian Terry's family be placed in the record. Without objection, so ordered.

Chairman ISSA. I would ask that Mr. Jones also be provided a copy if he doesn't already have it.

Mr. MICA. Personal privilege.

Chairman ISSA. The gentleman is recognized.

Mr. MICA. I want to introduce a very, very special guest, somebody who is read about in the history books, who is my guest today. The gentleman sitting back here is Joe Kittinger, who held the record of a man jumping from space. He has had almost every honor you can imagine nationally and internationally, a part of the National Aviation Hall of Fame. Joe is here with his wife, Sherri. Joe, raise your hand so everyone can see you. Thank you for being with us today.

Chairman ISSA. I thank the gentleman.

We now welcome our witness, the Honorable B. Todd Jones, the first full Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives.

Pursuant to committee rules, I ask the witness to please rise and take the oath.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

[Witness responds in the affirmative.]

Chairman ISSA. Mr. Jones, you are a returning witness, so you know the routine. We won't shut off the clock but hopefully you will use close to the five minutes.

The gentleman is recognized.

#### **STATEMENT OF B. TODD JONES, DIRECTOR, BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES**

Mr. JONES. Chairman Issa, Ranking Member Cummings and members of the committee, thank you for the opportunity to appear today.

I am pleased to be here to discuss the progress ATF has made in implementing reform and to discuss our undercover storefront operations.

As you all know, ATF's principal mission is to protect our communities from violent criminals who engage in acts of arson, criminally misused explosives and illegally possessed and used firearms. We accomplish this mission through both the enforcement of the criminal law and regulation of the firearms and explosives industries.

When violent crime shakes our Nation, ATF is there to work side by side with our law enforcement partners providing our specialized skills, tools and experience. As was mentioned, in the past two years alone, ATF has provided crucial support to our federal and local partners in the investigation of the Boston Marathon bombing and the horrific mass shootings in Aurora, Colorado, Newtown, Connecticut and the Washington Navy Yard.

Equally important though, we work with these partners to address the less visible, but no less devastating daily violence that plagues our cities and towns, large and small. Across the country, ATF pursues the most violent criminals, particularly those who engage in organized gang violence or illegally supply those gangs with firearms.

A few of these successes are highlighted in the full written statement we have submitted.

Our agents put their lives on the line on a daily basis. As they investigate our Nation's most violent criminals, they must make difficult and often instantaneous decisions every day, constantly balancing public safety, their own safety and the integrity of the operation.

Of all the activities undertaken by ATF agents in the field, none is more risk laden or potentially more valuable than under cover work. ATF agents working under cover have infiltrated and brought down notorious motorcycle and street gangs, thwarted murder for hire plots and removed thousands of guns from the hands of criminals.

The committee has asked that I address one under-cover tactic in particular, the use of storefront operations. A storefront operation is a valuable investigative technique in which the under cover law enforcement officers or agents operate a business that is calculated to identify and proactively intervene with criminals and criminal activity in high crime areas and hot spots. They are also conducted as joint operations with other federal, State and local law enforcement agencies and prosecutors.

ATF conducted 37 storefronts between 2009 and 2013. ATF had one storefront active in 2013 and currently we have no active storefront operations.

Storefronts are staff, equipment and resource intensive and require significant planning and coordination. The success of the storefront is also dependent upon a strong partnership and ongoing collaboration with our local law enforcement partners.

The storefronts to be discussed here today identified and built cases against criminals and would be criminals in each and every location. As a result of our storefront operations in Albuquerque, Atlanta, Milwaukee, Pensacola, Portland and Wichita, over 250 defendants have been convicted and over 1,300 firearms recovered.

These defendants have over 350 previous felony convictions. These convictions and the firearms recoveries undoubtedly made the communities and the people who live there safer.

I acknowledge, Mr. Chairman and members of the committee, that there were deficiencies in our execution and management of some past activities in certain storefronts, but I want to assure you that public safety is the utmost importance to me and our current team at ATF.

We recognize that storefronts and other under cover operations require stringent oversight in all facets of planning and execution. We have put in place several policy and operational changes, created a tighter process for the authorization, management, oversight and review of under cover operations, including storefronts.

As an organization, we are committed to learning from the past and using some of those hard learned lessons to improve, adapt and ensure we do not repeat the mistakes of our predecessors.

In addition to our own efforts, ATF has and will continue to cooperate with all inspector general reviews and investigations. Some of the specific reforms we have instituted pursuant to our own initiatives are outlined in our written submission, but the important point is putting policy into practice. That is what we have been working on very hard for the last several years.

It is one thing to put policies on paper but another thing to make them real and put them into practice. All ATF employees, including me, are accountable for their actions and must act at all times with professionalism, integrity and commitment to the agency's vital public safety mission.

While I firmly believe we are on the right path, I am also realistic, Mr. Chairman, and recognize that meaningful change takes time.

Mr. Chairman and members of the committee, I want to conclude by saying that ATF is proud to be at the front line against violent crime that we are recognized across the country for our expertise and take great pride in our successes that reduce gun violence and remove violent offenders from the streets.

I am humbled by the exceptional work done every day by ATF special agents, industry investigators and the support staff in combating violent crime. In the face of sustained criticism over the last several years, the dedicated men and women of ATF have continued day in and day out to work tirelessly to enhance the safety for all Americans. They and their families have my deepest gratitude for their sacrifices that this often thankless work requires. I am honored to be here today to represent ATF.

Thank you for your interest. I am sure you have questions which I will do my best to address.

[Prepared statement of Mr. Jones follows:]

**Statement of B. Todd Jones, Director  
Bureau of Alcohol, Tobacco, Firearms and Explosives  
U.S. Department of Justice  
Before the Committee on Oversight and Government Reform  
U.S. House of Representatives  
April 2, 2014**

Chairman Issa, Ranking Member Cummings, and Members of the Committee, thank you for the opportunity to appear today. I am pleased to be here to discuss progress the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has made in implementing reform and to discuss our undercover storefront operations.

ATF's principal mission is to protect our communities from violent criminals who engage in acts of arson, criminally misuse explosives, and illegally possess and use firearms. We accomplish our mission through both the enforcement of criminal law and the regulation of the firearms and explosives industries. ATF is unique among U.S. law enforcement; no other agency possesses our specialized capabilities and expertise. As a result, ATF has a long history of providing our Federal, state, and local partners with critical resources and support in the fight against violent crime. We highly value our partnerships and strong working relationships with local law enforcement, public safety agencies, industry groups, and community organizations. When violent crime shakes our Nation, ATF is there to work side-by-side with these partners, providing our specialized skills, tools, and experience. In the past two years alone, ATF has provided crucial support to our partners in the investigation of the Boston Marathon Bombing, and the horrific mass shootings in Aurora, Colorado, Newtown, Connecticut, and the Washington Navy Yard.

Equally important, we work with these partners to address the less visible, but no less devastating, daily violence that plagues our cities and towns, large and small. Across the country, ATF pursues the most violent criminals, particularly those who engage in organized gang violence or illegally supply those gangs with firearms.

Some recent examples of successful investigative partnerships include prosecutions in Lexington, Kentucky, where ATF helped secure the convictions of 33 defendant gang members, who aligned themselves with the Black P. Stone Nation. This gang was allegedly associated with 15 shooting incidents over nine days resulting in one death and 14 wounded. These defendants had 67 previous felony convictions. Many of those convicted were responsible for armed drug trafficking and numerous other crimes. In Raleigh, North Carolina, ATF aided in the conviction of 24 members of the Money Gang Mob, a sect of the Bloods.

ATF's investigation exposed the fact that the gang acquired guns in North Carolina and trafficked them to New Jersey in exchange for heroin. They have been associated with considerable violence

in the community including the use of firearms during drug robberies, murder, kidnapping, rape, and the drive-by killing of a 16-year-old boy. In Howard County, Maryland, the Bloods criminal street gang was alleged to be involved on a daily basis in violent criminal activity, such as armed robberies, aggravated assaults, firearms trafficking, prostitution, and trafficking of controlled substances. On May 7, 2013, as a result of ATF's work with our partners, twenty one individuals were federally indicted for violations of the RICO and drug conspiracy laws.

As a complement to these productive and sustained local partnerships, ATF also has the capacity to engage in targeted, time-limited, strategic operations. ATF's new leadership team implemented this strategy when they recognized we needed to be more agile and focused in the deployment of our agents and assets. To achieve that agility, ATF has in the last several years developed a mobility model that allows us temporarily to bring additional resources to communities with high rates of firearms violence and other violent crime. These concentrated operations focus on investigating and prosecuting the worst offenders and criminal organizations in a community, creating the space and time needed to allow local law enforcement and community groups to accomplish sustainable change. For example, a recent ATF-led concentrated operation in St. Louis, Missouri and East St. Louis, Illinois, resulted in the seizure of more than 260 firearms and charges against approximately 150 defendants, nearly 80 percent of whom are previously convicted felons. Other ATF-led concentrated operations in Flint, Michigan, Stockton and Oakland, California, New Orleans, and Philadelphia have yielded similar results.\

While highly effective and noteworthy, these operations, like all law enforcement operations involving violent criminals, also involve considerable risk. Our agents put their lives on the line on a daily basis. As our agents investigate our Nation's most violent criminals, they must make difficult and often instantaneous decisions every day, constantly balancing public safety, their own safety, and the integrity of the operation.

Of all of the activities undertaken by ATF agents in the field, none is more risk-laden – or potentially more valuable – than undercover work. ATF agents working undercover have infiltrated and brought down notorious motorcycle and street gangs, thwarted murder-for-hire plots, and removed thousands of guns from the hands of criminals.

The Committee has asked that I address one undercover tactic in particular: the use of storefront operations. A storefront operation is a valuable investigative technique in which undercover law enforcement officers or Agents operate a business that is calculated to identify and proactively intervene with criminals and criminal activity in high crime areas or hotspots. They are often conducted as joint operations with other federal, state, and local law enforcement agencies and prosecutors. ATF conducted 37 storefronts from 2009-2013. ATF had one storefront active in 2013, and currently, ATF has no active storefront operations.

Storefronts are staff, equipment, and resource intensive, and require significant planning and coordination. The success of a storefront is also dependent upon a strong partnership and on-going collaboration with our law enforcement partners. In storefront operations, ATF is focused on targeting illegal traffickers of firearms, violent offenders, and the criminal possession and use of firearms; our state and local partners are frequently involved and may focus on narcotics and other crimes. Some of ATF's storefront operations were undertaken after local law enforcement partners requested our assistance with violent crime activity in target areas. We recently implemented a requirement for written concurrence with storefront plans from the Chief Law Enforcement Officer of the jurisdiction of the operation. In addition, from planning to execution to prosecution, we partner with the relevant U.S. Attorney's Office.

The storefronts to be discussed here today identified and built cases against criminals and would-be criminals in each and every location. As a result of our storefront operations in Albuquerque, Atlanta, Milwaukee, Pensacola, Portland, and Wichita, 259 defendants have been convicted, and over 1,300 firearms recovered. These defendants have over 350 previous felony convictions. These convictions and firearms recoveries undoubtedly made the communities and the people who live there safer.

As noted above, like any undercover operation, a storefront carries risks. A properly managed operation minimizes those risks through planning, coordination, and oversight. ATF recognizes our responsibility to the public to ensure sound management and professional execution of these efforts. I acknowledge, Mr. Chairman and Members of the Committee, that there were deficiencies in our execution and management of some past activities in certain storefronts. We have since implemented new policies and procedures to minimize the chance of such deficiencies occurring in the future.

I want to assure you that public safety is of the utmost importance to me and our current executive leadership team at ATF. We recognize that storefronts and other undercover operations require stringent oversight in all facets of planning and execution. Under our leadership, ATF has put in place several policy and operational changes that create a tighter process for the authorization, management, oversight, and review of undercover operations, including storefronts.

Perhaps most importantly, I have assembled a leadership team that fully understands and appreciates that constant vigilance and accountability is required to minimize the risks inherent in law enforcement operations involving violent criminals. As an organization, we are committed to learning from the past, and using some of those hard-learned lessons to improve, adapt, and ensure that we do not repeat the mistakes of our predecessors.

It bears noting that my confirmation followed a 7-year period in which the Bureau had five acting Directors. Not surprisingly, this lack of continuity in leadership and management significantly impacted our internal oversight of agency operations, our long term planning ability, and our performance. Many issues identified by the Inspector General, which I and my leadership team continue to tackle, originated during this succession of acting Directors.

Mr. Chairman, our new leadership team has conducted a top-to-bottom review of all ATF policies and procedures, which has led to many changes. We have taken steps to strengthen our oversight, supervision, case management, strategic use of resources, and accountability. We are working hard to change ATF, implementing policies and overhauling antiquated doctrine to better manage our operational risks, providing for close managerial oversight of operations, and improving our mission performance. In addition to our own efforts, ATF has and will continue to cooperate with all Inspector General Reviews and investigations.

Some of the specific reforms we have instituted pursuant to our own initiative and in response to Inspector General recommendations include:

- A complete overhaul of our executive staff, including 23 out of 25 field Special Agents in Charge and 38 headquarters senior executives, affecting nine out of ten directorates;
- The development of Frontline, a business model that serves as a blueprint to guide strategically ATF's operations;
- The standardization and updating of ATF's policy regarding the transfer of firearms in criminal investigations;
- The development of the Monitored Case Program to ensure better coordination and oversight in our most significant investigations;
- The revision of our policy on the use of confidential informants;
- An improved case deconfliction process;
- Establishment of a robust Self-Inspection Program;
- Reorganization of the Office of Chief Counsel and the International Affairs Division;
- An improved coordination between enforcement and intelligence functions; and
- Refinement of our disciplinary process and improvements to our training functions.

All ATF employees, myself included, are accountable for their actions and must act at all times with professionalism, integrity, and commitment to the agency's vital public safety mission. While I firmly believe we are on the right path, I am realistic Mr. Chairman, and recognize that meaningful change takes time. Having been confirmed as the ATF Director for seven months now, I look forward to continuing to expeditiously press forward on these improvements.

Mr. Chairman and members of the Committee, I want to conclude by saying that ATF is proud to be at the frontline against violent crime. We are recognized across the country for our expertise and take great pride in our successes that reduce gun violence and remove violent offenders from

the streets. I am humbled by the exceptional work done every day by ATF Special Agents, Investigators, and support staff combating violent crime. In the face of sustained criticism over the last several years the dedicated men and women of ATF have continued, day in and day out, working tirelessly to enhance the safety of all Americans. They and their families have my deepest gratitude for the sacrifices this often-thankless work requires and I am honored to be here today to represent ATF.



Chairman ISSA. Thank you, Director Jones.

I too want to reiterate the importance of the work that the men and women of the ATF do and how much we appreciate the many who take the risk to do the right thing in the right way.

Let me go through a couple of questions. No surprise, the first one is a little related to Fast and Furious. Everybody at the Department of Justice, from yourself to the Attorney General, is living under the specter of Fast and Furious and how it discredited the men and women who do these jobs otherwise right.

To make the record clear, was anyone fired as a result of Fast and Furious?

Mr. JONES. Mr. Chairman, I can say publicly in this forum that everyone involved with ATF and the chain of command has either been disciplined or is no longer with the agency.

Chairman ISSA. Okay, but the answer of fired is no, is that correct? Say yes or no.

Mr. JONES. As a result of the Inspector General's report, the answer is no.

Chairman ISSA. No one was fired, some chose to retire, so let us go to a particular individual of interest, William Newell. The IG recommended he be removed but in a settlement, we have learned he was demoted from SES to GS-13. Did you approve that settlement?

Mr. JONES. Mr. Chairman, we provided to the committee in great detail a confidential document of the processes we followed internally following the release of the IG's report. It outlines with some particularity all of the individuals that were identified in that report and the actions taken.

I am not at liberty in this public forum to get into details.

Chairman ISSA. Director, you are here pursuant to a subpoena specifically because Congress does not afford you that choice on the Privacy Act by the statute itself. More importantly, we know what occurred. My question simply was one that you can answer and has nothing to do with privacy. Did you make that decision?

Mr. JONES. The process at ATF involves a professional responsibility board.

Chairman ISSA. Director, I understand. I am only asking did you influence or have an input into that call of his not being fired, his continuing to draw a paycheck and eventually retire at his high pay as an SES?

Mr. JONES. I did not.

Chairman ISSA. You did not. Did your number two have that influence?

Mr. JONES. The process involves the Bureau deciding official and the ultimate decision-maker is the Deputy Director with appeal to me should the employee not be satisfied.

Chairman ISSA. But the employee was satisfied and number two made the call, is that fair to say for the public record?

Mr. JONES. That is fair to say.

Chairman ISSA. Similarly, the Professional Review Board proposed that Hope McAllister receive a 14-day suspension, which I consider pretty minor. This was reduced to a letter of reprimand. Would that also have gone through your deputy?

Mr. JONES. Again, Mr. Chairman, the process is pretty well delineated in terms of the rights of the employees to grieve and the ultimate decision being made with my involvement with the Senior Executive Service being a little different than anyone who is not a member of the SES ranks.

Chairman ISSA. The Professional Review Board proposed that David Voth be demoted to a non-supervisory special agent position. In settlement, he was demoted. Again, that would have been the same process you are alluding to?

Mr. JONES. It was the process and it was followed.

Chairman ISSA. So McAllister, Voth and Newell, none were fired, all received certainly less than what the American people would expect.

Let me move on to the five separate undercover storefront operations with the Milwaukee one being the best known.

At this point, I am going to ask unanimous consent that the letter dated December 12, 2013 from the organization and nonprofit called ARC for people with intellectual and developmental disabilities addressed to the Attorney General be placed in the record along with excerpts from their website. Without objection, so ordered.

Chairman ISSA. I am going to read to you Director Jones, something from that letter in which Attorney General Holder they say decides that it is appalling and unfortunate. They say, speaking of the intellectually disabled, people with low IQs, "They typically have limited if any understanding about their involvement in crime or the consequences of being involved in a crime. With few options for or opportunities to build safe relationships, their strong need to be accepted by peers in their own communities can create a unique vulnerability that people without IDD do not experience."

Have you become familiar with the effects that agents can have by buddying up to people with IQs in the 50s as a result of these operations?

Mr. JONES. I think it is important to point out that we not target the developmentally disabled. When we run an undercover operation, we have very limited control over who comes in the door. I can tell you that my review of the circumstances, I have met with ARC and talked with them about the concerns with enhanced training, but all of these issues that have been identified in the media with respect to developmentally disabled individuals being targeted are the result of defense pleadings during the process.

I am a former prosecutor. Oftentimes in investigations, the criminal investigators have no idea what the individual's intellectual capacity is.

Chairman ISSA. But your agents worked with these people including, at least one individual who had to be tutored, I understand, through what a machine gun was so they could send him out to buy one so they could then arrest him.

Director, we have had a good relationship, you have a big job but I am going to ask you one closing question. Are you actually telling us that it is just an accident that your people managed to find people with extremely low IQs? These are people who are barely functional, who clearly demonstrate their special needs and limitations, very, very limited people.

In the 70s and 80s, you might say he is just not the brightest ball; in the 50s and 60s, these are people severely handicapped who just want to buddy up, who really exhibit a type of behavior that most people in America are somewhat familiar with, even if it doesn't enter their lives.

You are saying that your agents don't look for these people who are so vulnerable they can just buddy up and get them to do these things? Are you saying that under oath here today?

Mr. JONES. No, I am not saying that.

Chairman ISSA. So your agents do target people with low IQs because they are susceptible, exactly as this letter say, to the kind of influence and what is most appalling to us is after they use these people often in dangerous positions, they then in many cases arrested the same people they had put in and talked into doing these crimes, is that correct?

Mr. JONES. No, that's not correct.

Chairman ISSA. That is what the Milwaukee Sentinel says and it is what the evidence seems to show.

I am going to let all of us continue on and hopefully I will come back to you.

Mr. Cummings?

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Picking up where the Chairman left off, we had admitted evidence into the record earlier, this letter from the Federal Law Enforcement Officers Association, Jon Adler is the national president.

This morning when I was reading this, there was a paragraph which kind of struck me because I too am very sensitive to what the Chairman just asked about, people with low IQs, having my own experience in my own family.

This is what Mr. Adler said, and I wonder if you agree with this. In this letter, he says, "It has been alleged that ATF targeted and exploited the mentally and incapacitated to facilitate storefront connections to perspective criminals. That is beyond absurd and no one in the field administers impromptu, Jeopardy-style quizzes to assess the IQ of perspective criminal elements. Prisons are occupied by criminals with IQs ranging from moron to genius.

"Anyone experienced in law enforcement will tell you that the former is the most difficult to use as a cooperator. Furthermore, criminal elements don't provide their Myers Briggs assessments to law enforcement and agents are left with making a variety of critical assessments of those they are dealing with in real time, including threat levels and safety issues."

"Nonetheless, neither the ATF nor any federal law enforcement component is in the practice of exploiting mentally incapacitated individuals."

I didn't say that. Mr. Adler, the National President, said that. Do you agree with that? Do you have any issue with what he said there?

Mr. JONES. Thank you for the opportunity to further explain some of the things the Chair was talking about.

We do not target developmentally disabled or mentally challenged individuals. We target criminal behavior. When you are running an uncover storefront operation with all of the bells and whistles to make sure you can maintain the integrity of the operation,

you have all kinds of individuals walking in the door. You have no idea.

I think it is interesting to note that the media reports about this targeting of individuals really is based primarily on defense motions that were filed and the culling of the public record and there is no awareness by the special agent at that time. All of these individuals were brought to trial and all of them raised claims in the context of sentencing advocacy about their intellectual capacity. That is not unusual.

I have been a defense lawyer too but that is after the fact, after someone has pled guilty. None of them claimed they were incompetent to stand trial.

That is not to excuse the sensitivity involved and the enhanced training that may be involved not only with the developmentally disabled but people with mental illness. There was an article today in the New York Times that talked about the challenges to law enforcement, State, federal and local, and particularly with ATF doing violent crimes type of operations where we are having interactions with people on the street much like State and local law enforcement officials.

It is a huge challenge for individuals who are in a law enforcement capacity to make determinations about someone's mental illness or their mental capacity.

Mr. CUMMINGS. Director, I would like to ask you about the specific action you took when you became of these allegations. When the Milwaukee Journal Sentinel published its first story in January 2013, you directed ATF's Office of Professional Responsibility and Security Operations to conduct an investigation, is that right?

Mr. JONES. That is correct. I gave them 30 days.

Mr. CUMMINGS. Had you known about it before then?

Mr. JONES. I had two indicators before that. One was some indication that a storefront in the St. Paul Field Division had been burglarized. That storefront closed down in September and it had been burglarized. I do have recollection about seeing the storefront being burglarized.

I also had an indicator in the report about the stolen weapons but that was the extent of the red flags that were going off. I think the third thing was when we did see that there were landlord tenant issues in part flagged in the Milwaukee Journal Sentinel about how we left the storefront, that is when we dispatched internal affairs to go out and do a deep dive and look at what was going on in Milwaukee.

Mr. CUMMINGS. I think the Chairman would be interested in hearing this also. I said it in my opening statement. Can you explain what is so unique about the storefronts and what problems does it get to that you have to bring that kind of operation into play?

Mr. JONES. It is an undercover technique that really is designed to do several things. One is to gather intelligence in the area that you locate the store, gather intelligence about crime gun trafficking, about criminal activity, it is also an opportunity to remove crime guns from the streets. That is in an ideal world but it is primarily an information, intelligence gathering technique and it is an opportunity to remove crime guns from the street.

Mr. CUMMINGS. In Baltimore where we have had a pretty high crime rate and had cooperation from ATF and many other agencies, one of the things I have always thought about and am concerned about, I live where *The Wire* was filmed, you talked about intelligence. If there is a drug operation going on and—using this hypothetically—fighting each other for territory, how do you get information to prevent a murder?

Would this kind of operation be helpful then? People look at murder rates in cities, but the question is how would police even know? Would this kind of operation go to that, too?

Mr. JONES. This is just a tool in the toolbox. There are other things that we do, other undercover types of operations. There is Title III telephone intercepts and then there is the good old fashioned investigation where people take information, they pull the threads, they use confidential informants and build a case brick by brick. That takes information.

Mr. CUMMINGS. The Chairman talked about this. We have an agency that has been under the microscope, that has been highly criticized and it is also an agency that didn't have a permanent director for years. This was an agency that some would like to see disappear.

It seems to me that one of the problems that I saw in *Fast and Furious* was that information did not filter up to the top. What is new now? What have you done to address that so that when you come before us, you can be held accountable?

We were in situations before where the top people knew nothing about what was going on down below. I was curious to where we are now with that and did we learn anything from that, did we learn anything from these storefront situations. When you pulled together your recommendations for how you do business now, how is that different, if at all?

Mr. JONES. A lot has changed. As I mentioned in my opening remarks, change takes time. One of the things I believe is really important to understand is the list that is required to turn policy and procedure into practice.

When I came on as Acting Director in September 2011, the Monitor Case Program had been on paper in July 2011. It was a paper program, those were the fundamentals. We took a lot of action with the pen right out of the blocks.

In addition to the pen, you need the people. You need to get the right people in the right spots, you need to construct a team and you need to emphasize the focus over and over again, that this has to be real. This has all taken place in an environment over the last several years and we have had tremendous turnover in the organization and a very challenging budget environment. We are grateful that we do have a fiscal year 2014 budget so that we can plan.

This is an organization, as you pointed out, that had not had continuous leadership. Now, between acting and being confirmed, I have 30 months on the job. I very much have the blocks beat. I own it for good or bad. When something is wrong, I am going to take action to fix it.

Those remedial steps don't always happen overnight. We have been working very hard with our team to make sure we are learning from mistakes, that some of the systemic challenges that were

pointed out in the OIG Fast and Furious Report are fixed and they stick.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Chairman ISSA. Thank you.

I now recognize the gentleman from Ohio.

Mr. JORDAN. Thank you, Mr. Chairman.

Mr. Jones, are you familiar with the name Catherine Engelbrecht?

Mr. JONES. I think that is an individual—yes.

Mr. JORDAN. Are you familiar with the fact that she testified in front of this committee eight weeks ago and her testimony under oath was that in 16 years of operating her business, the only interaction she had with the Federal Government was filing her annual tax returns. She filed for tax exempt status for two organizations she was involved in creating, True the Vote and Kingstreet Patriots and then just all kinds of interaction with the Federal Government.

OSHA visits her place of business. That never happened in the first 16 years but then OSHA visits her place of business twice. The IRS audits both her personal and business records for two years. The FBI pays her six visits, two in person and four on the phone. Another organization, your organization, pays her two visits as well.

I sent you a letter six weeks ago asking for documents relating to the visit ATF made to Ms. Englebrecht's place of business and you have yet to respond to us. Is there a reason why you cannot get us those documents?

Mr. JONES. I can check into what the delay is in the response.

Mr. JORDAN. It has been six weeks, Mr. Jones. It would seem to me to be a pretty simple search. You put the name Englebrecht in your computers, come up with the documents and get them to Chairman Issa and myself.

Mr. JONES. I understand that Ms. Englebrecht's interaction with us—I cannot speak for any of the other federal agencies—involved a license request, a qualification inspection and then a follow up.

Mr. JORDAN. She had that license for 12 years. Why did you suddenly decide to go visit her. The previous 12 years you never had any interaction with her, then you visit her in February 2012 and April 2013. Why did you visit her on those dates? Why did you visit her twice in 13 months when for the first 12 years, you never paid her any visits?

Mr. JONES. Congressman, I will get back to you on the letter.

Mr. JORDAN. Let me read what the Inspector General's report said about how ATF goes out and looks at federal firearms licensees compliance inspections. It says you look for a high risk indicator. Is that true?

Mr. JONES. That is one of the factors.

Mr. JORDAN. High risk indicators says this: such as a high number of guns used in crime scenes traced back to the licensee, numerous multiple sales by a federal firearms licensee to a single individual, thefts or losses of firearms, location in a high crime area, tips from State or local law enforcement agencies, do you know if you had any of those circumstances or any of those indicators or any of those present before you went to visit Ms. Englebrecht?

Mr. JONES. I don't have information sufficient in front of me to answer that.

Mr. JORDAN. I can tell you, none of them were and yet you show up. In 12 years, no one ever heard from ATF in 12 years and then suddenly, she applies for tax exempt status and you knock on her door twice in 13 months.

Mr. JONES. Congressman, I wish I had better answers.

Mr. JORDAN. This is a pretty important issue. It has been front and center in the news for over a year now. I do too.

Imagine what this lady felt like. She gets the full weight of the Federal Government coming down on her, her family and her business and all she is trying to do is get a tax exempt status that had been routine for 15 years. Suddenly, the Federal Government is saying no, no, no, you are not going to get that tax exempt status and we are going to send four federal agencies out to harass you, including yours.

Mr. JONES. Congressman, it is unfortunate that you and Ms. Englebrecht think it is harassment. From our perspective, it is part of our regulatory function.

Mr. JORDAN. Don't you think it is unusual that four federal agencies visited her in that short time frame?

Mr. JONES. I cannot speak for other agencies other than ATF.

Mr. JORDAN. Let me ask you this. Did anyone at the White House encourage ATF to pay Ms. Englebrecht a visit in Dallas, Texas?

Mr. JONES. No.

Mr. JORDAN. Did any other federal agency talk to you or anyone at ATF and encourage you to inspect and visit Ms. Englebrecht?

Mr. JONES. No.

Mr. JORDAN. Did any member of Congress contact you or anyone at ATF and encourage you to go out and visit and inspect Ms. Englebrecht's federal firearms license?

Mr. JONES. Not to my knowledge.

Mr. JORDAN. No knowledge of anyone contacting you at all?

Mr. JONES. No.

Mr. JORDAN. Have you talked to any other federal agency about what you learned or discovered when you visited Ms. Englebrecht's place of business?

Mr. JONES. Not to my knowledge.

Mr. JORDAN. What did you discover when you visited there in February 2012 and April 2013?

Mr. JONES. It was a qualification inspection. I have no idea based on what I have.

Mr. JORDAN. Were there any citations, any problems, any fines, anything that you discovered?

Mr. JONES. I don't know.

Mr. JORDAN. Our standing is there is not. We talked with Ms. Englebrecht. In fact, we had her sit in that same chair and answer questions from this committee.

Let me ask one other question. Did Tom Perez have any input into your agency's determination to go inspect and investigate Ms. Englebrecht's place of business?

Mr. JONES. No.

Mr. JORDAN. Mr. Chairman, I yield back.

Chairman ISSA. Would the gentleman yield?

Mr. JORDAN. I would be happy to yield.

Chairman ISSA. I also signed onto that letter and was disappointed we did not receive further answers before this hearing.

I will say that in light of the deliberate and verified targeting of conservative groups by Lois Lerner and the IRS, we cannot take coincidence, things which occur which appear to be linked to somebody's application as a conservative for an IRS application. There were leaks from the IRS of names of contributors, including a constituent of the Ranking Member, that were damaging and appear to be deliberate.

I hope you understand that when we see a pattern by an agency and then we see coincidences, it is our committee's requirement to fully explore what appear to be unusual anomalies. We are not accusing you of anything but we do need the specifics of both classified and unclassified, if necessary, so that we can understand how such an anomaly occurred.

Mr. JORDAN. Mr. Jones, can you give us a date when you can get those documents to the Chairman and myself and the entire committee?

Mr. JONES. We will work with staff and your staff to figure out the specifics.

Mr. JORDAN. Sooner or later? Is it going to be as soon as next week?

Mr. JONES. As soon as we can.

Mr. JORDAN. Thank you, Mr. Chairman.

Chairman ISSA. I only want your commitment that you will provide them.

Mr. JONES. I have been cooperative with both your staffs and committee members in providing information as quickly as we can. I hope you understand there is a process. I do know that we have to get better answering the mail.

We have worked very hard and have changed some of our processes to get better in answering the mail because we know you need information and we have it but we also have a certain process and level of sensitivity.

Mr. JORDAN. Mr. Chairman, again, this is simple. This is one individual, Catherine Englebrecht and the documents relating to why after 12 years of never showing up at her place, why you decided to go twice in 13 months. Any document that has Englebrecht mentioned in it, we want that information. That is a pretty simple search.

I think you can have it to us in a week, a day maybe, but here we are six weeks later and you are telling us we will try to do it as soon as we possibly can. We heard that last week from John Thomson at the IRS. He told us two years.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Virginia, Mr. Connolly.

Mr. CONNOLLY. Thank you, Mr. Chairman.

Welcome, Director Jones. We are so glad you are in place and confirmed after seven years of Acting Director at the ATF and we finally have a confirmed Director. Thank you.

I think it is quite notable that in your brief tenure, you have already made a huge change. As I understand it, 23 field special



agents in charge, out of 25, are new under your leadership; 38 new headquarters senior executives are new under your leadership; to say nothing of looking at the storefront operations and making reforms there.

You can look up Ms. Englebrecht. I remember that hearing too. She seemed to think that it was outrageous that the government was out to get her because she wasn't notified of an OSHA inspection at her manufacturing plant. Of course the statute is clear, that would actually be a violation of law if OSHA had given advance notice of when they were coming.

She was found to have nine serious violations. She was not inspected for a period of time. We only have 2,200 OSHA inspectors for 8 million workplaces. It is not unusual that there can be a gap of as much as 20 years before a firm might actually be inspected.

She settled, by the way. The original fine was \$24,850 and she settled for \$14,910, so other than that, the government is out to get her.

Director Jones, did you volunteer to come and testify before this committee?

Mr. JONES. I appear with an invite from the Chair.

Mr. CONNOLLY. Were you subpoenaed to come here?

Mr. JONES. I believe there was a subpoena issued but I was coming before the subpoena was issued.

Mr. CONNOLLY. So you are not here as an unwilling witness?

Mr. JONES. No. I look forward to answer your questions.

Mr. CONNOLLY. The Chairman has alleged ATF has not been cooperative in this investigation, so let me go through that.

On April 15, ATF provided committee staff with a briefing by an Assistant Director with operational knowledge of the Milwaukee operation. Is that correct?

Mr. JONES. After Internal Affairs did their report with a 30 day turnaround, I believe they finished in March and we had a briefing because of some of the confidentiality issues.

Mr. CONNOLLY. On April 15?

Mr. JONES. On April 15.

Mr. CONNOLLY. You were certainly cooperative with that?

Mr. JONES. Yes, sir.

Mr. CONNOLLY. At the briefing, your staff provided an overview of the detailed report that you ordered from the Office of Professional Responsibility and Security Operations. Is that right?

Mr. JONES. Yes, sir.

Mr. CONNOLLY. On April 30th, the Department of Justice provided additional information in response to the committee's request answering questions about the operation and your knowledge of it. Is that right?

Mr. JONES. That is my understanding.

Mr. CONNOLLY. The Department provided documents in response to the committee's request including ATF's policies for the storage of firearms and vehicles and for conducting a storefront operation. Is that correct?

Mr. JONES. Yes.

Mr. CONNOLLY. On May 31, the Department provided additional information, including steps ATF had taken for improvements to

planning and oversight over undercover storefront operations. Is that correct?

Mr. JONES. Yes, sir.

Mr. CONNOLLY. You did not provide the report from the Office of Professional Responsibility at that time. Is that correct?

Mr. JONES. I believe that is correct, although it has been——

Mr. CONNOLLY. Don't jump ahead of me. At that time, you did not provide it?

Mr. JONES. That is correct.

Mr. CONNOLLY. The reason you didn't provide it was

Mr. JONES. We were fixing things.

Mr. CONNOLLY. And you were in the middle of a criminal investigation?

Mr. JONES. Yes, we were.

Mr. CONNOLLY. You didn't want to compromise that criminal investigation, that would be a bad thing and the outlandish risk that somebody in this committee might leak it or use it?

Mr. JONES. Once we produce information that could compromise a criminal investigation, there is always sensitivity when we have parallel investigations and requests outstanding from Congress, from the Inspector General and their active criminal investigations.

Mr. CONNOLLY. That report has now been provided to the committee, is that correct?

Mr. JONES. With some redactions, yes.

Mr. CONNOLLY. On March 19, the Chairman issued the subpoena. In his letter to you, he accused you of "a complete lack of cooperation with the committee's investigation." He stated, "not once have you or your staff responded to any of these letters and produced even a single document." Is that an accurate statement of your relationship with this committee?

Mr. JONES. I would hope that our relationship is appropriate and professional and that the information that we provide is done in a timely manner.

Mr. CONNOLLY. But the fact is, Director Jones, you and your staff have made yourselves available to this committee and you have produced documents, including the one we just talked about, is that correct?

Mr. JONES. Yes, sir.

Mr. CONNOLLY. So it is not accurate to say you have not produced a single document or that you have been completely uncooperative with this investigation or is it?

Mr. JONES. That is not accurate, sir.

Mr. CONNOLLY. I thank you and I thank you for your service, Director Jones. We wish you all the success.

Thank you. I yield back.

Chairman ISSA. Mr. Connolly, would you like to take the witness stand? You seem to be not only good at giving testimony, but you are very good at getting Mr. Jones to give known answers.

Mr. CONNOLLY. Mr. Chairman, I have learned from the best.

Chairman ISSA. I have never been able to get Mr. Jones to answer something yes or no but you are a master and I congratulate you.

Mr. CONNOLLY. I thank the Chair.

Chairman ISSA. Thank you.

We now go to the gentleman from Utah, Mr. Chaffetz.

Mr. CHAFFETZ. Thank you, Mr. Chairman.

Director, thank you for being here. Congratulations on being appointed and confirmed. We need you in this position and wish you nothing but the best.

Mr. JONES. Thank you.

Mr. CHAFFETZ. We want to thank the men and women who serve on the front lines in very difficult situations dealing with nefarious characters and God bless them for the work they do.

I would ask unanimous consent to enter into the record an Office of Professional Responsibility and Security Operations Report on Operation Fearless dated March 21, 2013, simply the executive summary on pages 14 and 15.

Chairman ISSA. Without objection, so ordered.

Mr. CHAFFETZ. Thank you.

Director, is it safe to say that the analysis to take away from Fast and Furious was that it was fatally flawed and disastrous, how would you characterize what happened with Fast and Furious, in just a word or two?

Mr. JONES. Fast and Furious?

Mr. CHAFFETZ. Yes.

Mr. JONES. That is why I am here. It was a lack of oversight and a leadership failure.

Mr. CHAFFETZ. If you look at what happened on Operation Fearless, how would you characterize it?

Mr. JONES. It was on a smaller scale because there is no comparison between Fast and Furious and what happened in Fearless. I am not excusing the things in our internal affairs report and we have taken remedial action to fix those things like we have every time we have identified them.

Mr. CHAFFETZ. It was flawed as well, too, correct?

Mr. JONES. It was flawed, there were mistakes that were made. It did result in prosecutions, it did result in guns coming off the street.

Mr. CHAFFETZ. But it is certainly not the poster child of what it should be doing and certainly not the fix we hoped it would be.

Mr. JONES. No. That operation had its flaws.

Chairman ISSA. Would the gentleman yield?

Didn't it also result in a machine gun going on the street that has never been found, a yes or no would be good, like Mr. Connolly?

Mr. JONES. Context is important too, Mr. Chair. I think it is important to note that the agent's vehicle was broken into between noon and three o'clock and the safe was broken into. It was unfortunate and weapons were lost, there were some recovered and there are some weapons that are still out there.

Chairman ISSA. Thank you.

Mr. CHAFFETZ. Do you recall when Bernard, otherwise known as B.J. Zapor, was appointed as the special agent in charge of the Phoenix office?

Mr. JONES. I believe last year Mr. Zapor moved to the Phoenix office. He was the Deputy Assistant Director of the Central but he moved to be Special Agent in Charge of the Phoenix Field Division.

Mr. CHAFFETZ. What I find curious, Director, that here we have the Phoenix office probably the highest profile on the heels of Fast and Furious and yet this same person was in charge of an office that was executing on Operation Fearless.

Here you have an interim report dated March 21, 16 fundamental deficiencies, and you take the person who is in charge of one of those offices and put him in charge of Phoenix.

Mr. JONES. Congressman, unlike Fast and Furious, there were very poor communications going on between the SAC in St. Paul and what was happening in Milwaukee.

Mr. CHAFFETZ. But you took Mr. Milanowski who supervised the Milwaukee office and you put him in Phoenix as well.

Mr. JONES. I sure did.

Mr. CHAFFETZ. Why do you do that? If this thing is so flawed, you agree that it was flawed. With Operation Fearless, you took the people who were overseeing the Milwaukee operation, the SAC and then the person in charge of the Milwaukee office and they get to go to Phoenix. You have to clean that place up.

I don't understand how we take two people responsible for that and put them in charge of Phoenix. I don't see the accountability, I don't see anybody getting fired. We are taking mentally handicapped people and putting tattoos on their necks. We have missing weapons. We have locations opening in proximity to schools in violation of the law. We have stolen agent weapons. We have an agent whose personal contact information was left in one of these offices.

We are enticing people across State lines to engage in prostitution type things. I could go on for ten minutes listing the allegations. Where is the accountability?

Mr. JONES. You have aggregated a lot of information without the opportunity to talk about some of those things in specifics. I can tell you that the individuals that were in the St. Paul division and the movements that were made were made for very good reasons based on their records of performance. That is not to excuse the mistakes made in Fearless.

Mr. CHAFFETZ. You don't have anyone more qualified than Mr. Zapor and Mr. Milanowski to oversee probably the most critical office on the heels of Fast and Furious after you have an internal report dated March 21 with 16 deficiencies listed. You don't have anyone better than that to go and run that office?

Mr. JONES. There is solid leadership in the Phoenix field division and a lot of oversight down there.

Mr. CHAFFETZ. So you have total confidence in Mr. Zapor and Mr. Milanowski?

Mr. JONES. I do.

Mr. CHAFFETZ. Thank you.

Chairman ISSA. Director, you said context was important. Would you let everyone understand what the gentleman inferred about the tattoo on the severely disabled person?

Mr. JONES. If you are talking about Operation Kraken in Portland, Oregon. I think it is important to note that the issue with respect to competency did not arise until the case morphed into litigation mode and defense counsel brought up the issue of intellectual capacity.

I think with respect to the tattoo, that was a mistake.

Chairman ISSA. Context is important. Just tell the story so everyone on the dais knows because not everyone knows and certainly the public doesn't know, what the agents did and what the judge did.

Mr. JONES. There as an individual, as I understand it, in Operation Kraken who on their own volition got a tattoo that was the logo for the storefront store and subsequently was reimbursed by the storefront in the undercover mode. That is my understanding.

Chairman ISSA. The judge's understanding was that the individual was talked into getting a tattoo which was basically bought by your agents. The judge ordered that you pay to have it removed. Isn't that correct?

Mr. JONES. That's correct.

Chairman ISSA. Thank you.

We will now go to the gentlelady from Illinois, Ms. Duckworth.

Ms. DUCKWORTH. Thank you, Mr. Chairman.

Thank you, Director Jones, for being here.

I am going to assume that when you come across processes and procedures within the agency that are substandard or sub par that you would be committed to investigating them and perhaps coming up with better procedures. Is that correct?

Mr. JONES. That is correct.

Ms. DUCKWORTH. Let us talk about what we have been talking this morning, the involvement of persons with developmental and mental disabilities.

I am deeply, deeply concerned this has happened. I understand your statement that many of these persons are not being recruited by your agents but, in fact, are people they come across in the course of doing their jobs.

What training do your agents have with how to deal with persons with developmental and mental disabilities once they encounter them?

Mr. JONES. That was the topic of discussion with ARC and that is something we are looking at. Unfortunately, one of the things that happened in a poor budget environment is training. Training is not what it should be and I think not unique to ATF.

When you talk about developmentally disabled or people with mental illness, there is not enough training of law enforcement officers to recognize and deal with in situations of stress or in undercover operations about how to deal and not deal with individuals. It is a very difficult challenge because oftentimes you cannot tell on the surface whether or not somebody has issues of that nature.

Ms. DUCKWORTH. Have you conducted an internal investigation into this issue?

Mr. JONES. The general issue, no. We have talked internally about developing better training regimes for folks, particularly in the undercover setting.

Ms. DUCKWORTH. What about in the particular case of the individuals who were enticed into participating, the case of the individual who had the tattoo, the case of the gentleman with the IQ in the mid-50s?

If your IQ is in the mid-50s, it is very clear that you are developmentally disabled. Have you done a formal investigation into those instances?

Mr. JONES. Other than the Milwaukee operation, all of these other storefronts identified in the media that are of concern predated my arrival, so my level of knowledge about some of those instances is not as deep.

I do know that the Inspector General has for review some of those storefront operations. We will work with them once they peel back the layers of the onion about the circumstances. Again, the media reports are not as wholesome with respect to the whole store.

A lot of the issues that have been raised about peoples' mental capacity only came to light during the trial process and sometimes in the sentencing process as part of mitigation for the sentencing.

This is not a circumstance where there are people who are obviously challenged walking into the storefront operation. These are after the fact knowledge that we learn of based primarily on the assertion of defense counsel.

Ms. DUCKWORTH. You don't think that your agents dealing with an IQ in the 50s knew he was developmentally disabled?

Mr. JONES. To be honest with you, I don't know what they thought. I have never met the individual. I don't know other than the fact that they were competent to stand trial, they pled guilty, they were sentenced for criminal conduct and during the sentencing process, issues were raised about their intellectual capacity.

Ms. DUCKWORTH. People with far higher IQs than 50 can also be intimidated in the trial process to confess just through the stress situation.

My question to you is, is there an IG investigation that is looking into this issue, correct?

Mr. JONES. Part of what the Inspector General at the Department of Justice is looking into is this set of storefronts and looking at the details as to what happened when, and why.

Ms. DUCKWORTH. Leadership starts from the top. What commitment have you made personally to pursue this particular issue whether it is to figure out what the situation was, to figure out what kind of training can be done even on a limited budget basis?

I am sure ARC would probably be willing to cooperate with you to provide some of that training or at least help you structure something. What commitment have you made to show the entire agency that this is important to you and is something that is not acceptable conduct among your agents?

Mr. JONES. We have met with ARC. We are in discussions with them about developing an appropriate training package. We have put out word through our internal processes about situational awareness on the issue, but it really is on the go forward a matter of enhancing the level of knowledge and understanding to the agents who are out there as to what they need to be on the look out for and how to deal with situations like that. It is a training issue and we are working on that.

Ms. DUCKWORTH. I am out of time, Mr. Chairman.

Chairman ISSA. The gentlelady yields back.

We will now go to the gentleman from Florida, Mr. Mica.

Mr. MICA. Thank you, Mr. Chairman.

Director Jones, I have a couple of questions about the operation in general. How long did this go on?

Mr. JONES. Which operation?

Mr. MICA. The storefronts? How long were the storefront operations going on?

Mr. JONES. It depends on the storefront.

Mr. MICA. The whole program. How many did you have, 30 some?

Mr. JONES. Thirty-seven storefronts between 2009 and 2013.

Mr. MICA. That would be about a four or five year period that this operation went on.

We have referred to some of the worse, egregious incidents that took place in Milwaukee. I think there were seven places that were cited at least in the report I have, Portland, Phoenix, Albuquerque, Wichita, Atlanta and Pensacola, all of which had botched operations. Is that sort of a given?

Mr. JONES. I wouldn't describe them as botched. The one I have the most knowledge of was Milwaukee.

Mr. MICA. Each of them had names. We have gone from Fast and Furious. I guess Milwaukee was given Operation Fearless. I think it should be renamed Operation Fearless and Brainless from what we have heard here today. Some of the things that went on are astounding.

How much money did they spend in this program, can you tell me, during the four or five years, a million, half a million, any idea? Can you provide the committee with the amount?

Mr. JONES. I believe some documents we have produced do give some indication as to the cost.

Mr. MICA. There were 36 of these storefronts, 7 had horrible experiences. It doesn't sound like Wichita had an exactly glorious operation. A known criminal came in with two AK-47s and we only bought one. He was a known felon and was let out on the street with the one that wasn't purchased. Are you aware of that case?

Mr. JONES. I do have some knowledge.

Mr. MICA. AK-47, we bought one. I am told we paid such a high price. I want to find out how much we paid for these, that actually where we had these operations, we had little crime waves. I heard you could get these weapons purchased at a higher than black market rate, so ATF was buying them at a high rate and we had little crime spree.

I have asked the staff to also look at these different operations but there was a spike in crime in those neighborhoods. Are you aware of that?

Mr. JONES. I know one of the indicators we have in terms of monitoring and making sure a storefront is operating, is it manufacturing crime.

Mr. MICA. I am interested in the results. How many weapons were seized in the whole program, do you know, or purchased, not seized?

Mr. JONES. I think in the six operations that are of particular interest to the committee, including Fearless, that were approximately 1,300 weapons taken off the street.

Mr. MICA. I would like to see for the whole period of time what number of weapons.

You said there were some indictments, how many indictments and arrests?

Mr. JONES. We can get that specific information back to you.

Mr. MICA. I would think that would be the first thing you would tell the committee, how many arrests there were, the cost of the operation, how many indictments—do you know how many indictments we had?

Mr. JONES. In the six storefronts under discussion, 250 defendants were convicted, over 1,300 firearms were recovered and the defendants had over 350 prior felonies. These are oftentimes not first time offenders.

In Milwaukee, there were 16 federal defendants and 10 State defendants and 150 firearms. In Pensacola, which was February to October 2011, 78 defendants convicted, 275 firearms recovered.

Mr. MICA. I am told the operations also had such a bad reputation that when the FBI was contacted about participating that they shied away or denied a cooperative effort with ATF. Are you aware of that?

Mr. JONES. I don't have sufficient knowledge to know why that happened. I am not going to speculate as to what occurred to have our federal law enforcement partners pull out on that.

I do know there were concerns expressed about data deconfliction and certain investigative concerns but I am not in a position to explain anything.

Mr. MICA. It sounds like the whole thing went haywire. Again, I would like to see for the record how much it cost and what the results were for the whole period of time.

I yield back.

Chairman ISSA. The gentleman yields back.

We now go to the gentleman from Massachusetts, Mr. Tierney.

Mr. TIERNEY. Thank you, Mr. Chairman.

Director Jones, thank you for being here today to give us your perspective as the Director and formerly, the Acting Director, as a former US attorney and as a former prosecutor as well. I think that is helpful for us.

I understand in many of these cases, it was local law enforcement that asked the ATF agency to set up these undercover storefront operations in their communities, is that correct?

Mr. JONES. My understanding is that in all of those operations, there was to varying degrees local law enforcement involvement.

Mr. TIERNEY. For example, in Milwaukee both federal and local law enforcement requested the agency's assistance. They wanted to target violent crime and gang crime and that is what led them to set up that particular storefront, correct?

Mr. JONES. Yes, sir.

Mr. TIERNEY. I think everyone knows that gun violence is a daily challenge in many of our communities. Can you tell us why a local law enforcement agency would make that type of request?

Mr. JONES. Oftentimes, it is a resource issue. Sometimes it is the collaborative nature of ATF's relationship with State and local law enforcement. We have excellent relations with State and locals across the country and we partner with them on much of the work we do in cities large and small. That partnership is very important to us.



Mr. TIERNEY. In your experience, how severe can the gun problem be in local communities where ATF is requested to assist?

Mr. JONES. That varies. Over the last couple of years, we have tried to be more focused in our resources by dedicating resources to those places experiencing either in the short or long term higher levels of gun violence but I think the partnership we have with local law enforcement is critical to our being successful.

Mr. TIERNEY. In the wake of all the horrific gun violence we have experienced in this country, the President developed a series of proposals that were aimed at reducing gun violence without infringing on the rights of lawful gun owners. They would provide law enforcement additional tools to prevent and prosecute gun crimes.

Last year, a bipartisan group of the Congress, 100 Democrat and Republican members lead by Representatives Meehan, Maloney, Rigell and Ranking Member Cummings, introduced the Gun Trafficking Prevention Act of 2013. That was a bill that would have made firearms trafficking a federal crime for the first time and impose stronger penalties for straw purchases. Can you explain what straw purchases are?

Mr. JONES. Straw purchasing essentially is making a misrepresentation on Form 4473 when you purchase a firearm legally that you are purchasing it for yourself.

Mr. TIERNEY. When, in fact, you might be purchasing it for a convicted felon or somebody else who is prohibited from owning a gun?

Mr. JONES. Yes, sir.

Mr. TIERNEY. That bill would have made those penalties stronger. It was supported by law enforcement around the country, was based on previous testimony from ATF agents who came before the Congress and told us how helpful it would be to finally create a federal offense for firearms trafficking.

Do you believe that would have been one useful tool in fighting gun violence?

Mr. JONES. As a former prosecutor and as now the Director of the law enforcement agency responsible for enforcing the Gun Control Act, having a more fulsome federal firearms trafficking statute would be very helpful in constructing cases and doing investigations.

Mr. TIERNEY. Can you talk a little bit about how ATF mission could be better accomplished by the adoption or strengthening of laws that would help reduce gun violence? Are there other ways we could be of assistance?

Mr. JONES. I don't want to step out of my lane because of course Congress makes the law, we enforce the law and there is lots of input into it. I can give you the perspective of a former prosecutor and someone who now works with ATF that there are things that could be different.

At the same time, I don't want to get into advocacy mode that is inappropriate.

Mr. TIERNEY. I respect that and I don't want to put you in that position.

Let me close by saying we have that Gun Trafficking Prevention Act of 2013 that is a bipartisan proposal. It has been supported by law enforcement across the country. Perhaps in one of our future hearings, rather than delving into conspiracy theories, we could

talk about why that legislation hasn't been brought forward and passed.

With that, I yield back my time.

Chairman ISSA. I thank the gentleman for yielding back.

We now go to the gentleman from Texas, Mr. Farenthold.

Mr. FARENTHOLD. Thank you, Chairman Issa.

Director Jones, thank you for being here. I know that is an uncomfortable seat sometimes. We may rename it the hot seat.

I want to step back and get a big picture idea. Can you refresh my memory? What was the stated goal of your storefront operations?

Mr. JONES. It is a business calculated to identify and proactively intervene with criminals and criminal activity in high crime areas.

Mr. FARENTHOLD. You open these storefronts and attempt to buy back guns from criminals?

Mr. JONES. That is a piece of it. Its primary value is intelligence gathering. Oftentimes the storefronts are wired for video and audio, people make admissions, we can identify them, and we can run criminal histories to see if they are prohibited on some occasions.

It is designed to attract a certain criminal element so that we can gather intelligence as to what is happening outside of the storefront.

Mr. FARENTHOLD. A normal goal of law enforcement is to move up the chain. Rather than getting the petty street criminal, you want to move up the chain to more serious offenders. That is normal operation for law enforcement, isn't it?

Mr. JONES. Sometimes. If you are interested in sort of an enterprise theory of investigation to take out a whole gang, but sometimes you are talking about a single trigger puller who has a reputation in the community of just being a bad actor.

Mr. FARENTHOLD. We had testimony in this committee about Operation Fast and Furious that what they were really after was taking down a drug lord in Mexico or abroad. What concerns me is, are we developing a mentality where we are after the more serious offenders, damned the consequences?

We saw in Fast and Furious we let guns walk across the border with tragic results. In this we see ATF encouraging people to saw off a shotgun, having to train someone in what an automatic weapon is.

Shouldn't we be focused on getting the job done? When we start going beyond that, it is like we get in trouble.

Mr. JONES. I think it is important that storefront operations, the ones we are talking about and the many others that are highly successful, are just a tool in a toolbox that we have. They are not the end all to be all. There are other undercover operations.

Mr. FARENTHOLD. I remain concerned that it is the Rudy Giuliani theory, if we fix the broken windows, the big stuff starts to take care of itself. Are we going for big headlines and big busts that may go forward with a political agenda or can we get down to the nitty gritty?

In a speech, you said, "It was time for the ATF to bring our A game to protect the American people and public from violent crime

and on my watch, that is what we are going to do.” Was Operation Fearless your A game?

Mr. JONES. No, it wasn’t the A game and we could do better. I freely admit that. We have learned lessons from Fearless. One of the reasons we dispatched internal affairs is to peel back the onion and see what went wrong, validate some of the things that worked and know what didn’t work.

I think it is significant to note that we hit the pause button on storefronts until we can get them right. Now, if we can’t do them right, we don’t do them. If we can’t do them right, we don’t do them. If they are not sited right, if they are not resourced right, if they are not staffed right, if there isn’t an intelligence purpose for it other than to generate numbers, we are not doing them.

Mr. FARENTHOLD. As we go forward, we have been having trouble from the Attorney General in getting Fast and Furious information. Are you willing to work hard with this committee to make sure we get to the bottom of these things so they don’t happen again?

Mr. JONES. I have read the Fast and Furious OIG report several times, including the last couple of weeks, and I fully understand some of the systemic issues. That is my challenge. There is ongoing litigation.

Mr. FARENTHOLD. We just cannot let this happen again.

I have one other quick question that a constituent wanted me to ask you. We are getting reports of trouble with imports of 7N6 Russian surplus ammunition, yet we are not seeing anything from your agency about this. Are you planning on implementing a new policy on that? I know that is kind of out in left field.

Mr. JONES. It is kind of out in left field. Brownsville is wonderful, by the way, but we will look into that if you will give us more context.

Mr. FARENTHOLD. We will get with you.

I am out of time. I will yield back.

Chairman ISSA. The gentlelady from Illinois, Ms. Kelly.

Ms. KELLY. Thank you, Director Jones.

As we assess the problems in Milwaukee, I would like to know how this investigative technique has been used in other cities to target violent crime. You stated in your testimony that since 2009, ATF has conducted 37 undercover storefronts.

Did the use of undercover storefronts only begin in 2009?

Mr. JONES. No. It is an investigative technique that really has its genesis going back as far as 20 years in south Florida during the height of the trafficking in Florida. We have very good people to do it. They are not always in the right place to do it and make sure it is done right. We have had very successful storefronts around the country.

Ms. KELLY. This technique has been used under other administrations like the Bush Administration?

Mr. JONES. I think the administration and the politics has less to do with it than the public safety value of using this as an undercover technique. It has been used for a long time.

Ms. KELLY. How do you measure the success of these operations?

Mr. JONES. I think one measurement of success is the people who end up coming into court. There were some successful operations

in other parts of the country that did identify and end in conviction for very long sentences of armed career criminals, people with extensive records.

There have been instances where storefronts have brought in people who are on the cusp of committing egregious acts of violence. I think the intelligence value and the way that people have been brought in, the trigger pullers and the traffickers of crime guns get pulled into this and giving us an opportunity to build a case around that person, eventually indicting them and hopefully sending them to prison.

Ms. KELLY. It is my understanding that the Pensacola police chief made a very strong statement about the outcome of an operation you did there in 2011, "The value of this operation is immeasurable and we may never know how many lives this may have saved." Do you agree with the police chief that the undercover operation might have saved lives?

Mr. JONES. I do agree with the police chief. It is very difficult to talk about the what if circumstance, but we do know there was good work done at a very fundamental level and trigger pullers and traffickers were pulled off the street and into the criminal justice system.

Ms. KELLY. We already talked about some of the other places where storefront operations occurred. Are you satisfied with the results in Albuquerque, Atlanta and some of the places we talked about, Portland and Wichita?

Mr. JONES. Again, I have deeper knowledge about some rather than others, but I do know that all of these operations resulted in criminals going to jail in the end and making the community safer.

Ms. KELLY. Also, we talked a lot about the storefronts, but what other tools are in the toolbox to get illegal firearms off the street and out of the hands of violent criminals?

Mr. JONES. One of the things we are doing particularly in Chicago is developing firearms trafficking techniques to see the flow in the black market of firearms. The crime gun pool is very deep and it is quite a challenge, doing things from the trafficking, following the gun, identifying FFLs who may be supplying crime guns, identifying individual traffickers in the black market who may be supplying crime guns.

We have worked real hard with folks in the northern districts of Illinois and in the northern districts of Indiana to study the firearms trafficking patterns and trying to intervene to cut off, to the extent we can, the supply and also make sure those engaged in unlicensed dealing, people selling guns on the black market, get our full attention so we can at least drain a little bit out of the crime gun pool.

Ms. KELLY. Representing that area, I am very glad to hear that. When I was a State legislator, that was the first bill I passed, dealing with straw purchases, so I know how very important that is.

Thank you so much. I yield back.

Chairman ISSA. The gentlelady yields back.

We now go to the gentleman from North Carolina, Mr. Meadows.

Mr. MEADOWS. Thank you, Mr. Chairman.

Mr. Jones, in your testimony, I know we are highlighting the six different storefront operations today but I think you said "other

highly successful storefront operations.” What are the other highly successful storefront operations?

Mr. JONES. The one that immediately comes to mind—I do not want to overstep because some of these are still in the moment.

Mr. MEADOWS. According to your testimony, there are no active storefronts right now, so I don’t know that we would be putting anyone in jeopardy.

Mr. JONES. Once they close down and it goes into prosecution mode.

Mr. MEADOWS. What are the other highly successful ones?

Mr. JONES. The one that immediately comes to mind, because I just saw a recommendation for an award, is Smoking Guns II in Miami Gardens in the southern district of Florida. That was very successful in taking out—

Mr. MEADOWS. What is successful? How do you define success?

Mr. JONES. Identifying a deadly armed criminal group engaged in both firearms trafficking and drug trafficking in south Florida.

Mr. MEADOWS. Do you have storefront operations in Chicago?

Mr. JONES. We don’t have any current storefront.

Mr. MEADOWS. Have you had them in Chicago?

Mr. JONES. As I sit here today, I cannot definitively say.

Mr. MEADOWS. I don’t think you have. How about in Los Angeles? Have you had in the city of Los Angeles storefront operations?

Mr. JONES. Again, I can’t off the top of my head say that we have never had or have not had a storefront in Los Angeles.

Mr. MEADOWS. Did you prepare to come and provide testimony today?

Mr. JONES. Yes, I did.

Mr. MEADOWS. Wouldn’t you assume some of that, out of the 37 storefront operations, that you would be able to figure out which ones you have actually had or not?

Mr. JONES. My focus was on the ones—

Mr. MEADOWS. I know where your focus was. In your testimony you talked about 37. You say today you can’t tell me whether you had one in Los Angeles, Chicago or New York. Have you have any storefront operations in any of those three cities?

Mr. JONES. Without certainty, right here now, I can’t say.

Mr. MEADOWS. What is your best guess?

Mr. JONES. I don’t like to guess when I am sitting here under oath.

Mr. MEADOWS. You have staffers behind you. Do they know if you have had any storefront operations in any of those three cities? I don’t believe you have but have you had any?

Mr. JONES. We will find out.

Mr. MEADOWS. Under what matrix do you decide where to put storefront operations?

Mr. JONES. Primarily by the intelligence needs and the commitment of locals to work with us.

Mr. MEADOWS. You are saying in those three cities, you might not have had the commitment of locals to work with you?

Mr. JONES. It is a technique that we use on occasion but it is not the only technique that we use.

Mr. MEADOWS. Let me tell you the reason I ask. Those three, according to the Center for Disease Control Prevention, according to

their report, are the top three cities in terms of gun-related violence. Yet you don't seem to have storefront operations in the very top three in our Nation in terms of gun-related violence.

The President even talks about Chicago. Yet you don't have operations there. Why would that be?

Mr. JONES. Because we are using other types of investigative techniques in those major metropolitan areas where the dynamics on the ground and the opportunities to identify bad guys are a lot different than in smaller venues.

Mr. MEADOWS. That is exactly what I thought you would say. There is not a direct correlation between storefront operations and gun related violence is what you are saying.

Mr. JONES. Depending on the venue you open, if you pick the right spot, yes.

Mr. MEADOWS. Those are the top three, you have no storefront operations, so there is not a direct correlation in terms of selling out of a storefront versus the number of deaths that happen according to gun-related violence? There is no empirical evidence that would suggest that?

Mr. JONES. It is a technique.

Mr. MEADOWS. I understand technique. Is there any empirical data or evidence to that effect because where you are placing these would suggest there is not.

Mr. JONES. We have placed them all around the country.

Mr. MEADOWS. Why didn't you place them in the top three gun-related, violent, murder capitals of our country? Why wouldn't you place them there? If there was a direct correlation, why wouldn't you place them there?

Mr. JONES. One thing that immediately comes to mind is in those larger urban areas, you have very difficult deconfliction issues going on because a lot of people are playing in the same territory. There are safety risks involved with this type of undercover technique, both in terms of maintaining its integrity, sharing information.

Mr. MEADOWS. If the Chairman will indulge this last question? Chairman ISSA. Briefly.

Mr. MEADOWS. Is it easier for an ATF agent to blend in in Wichita, Kansas than it is in New York City?

Chairman ISSA. I am not sure if he can.

Mr. JONES. I can't answer that. In some of these storefronts, we bring in undercovers from different parts of the country. One reason we don't often have local law enforcement in an undercover capacity in a place like Milwaukee where they weren't behind the counter is because they work in Milwaukee and may run into somebody they have arrested.

Maintaining the integrity of the undercover operation does sometimes require bringing in people from out of town because they are not known.

Chairman ISSA. Thank you.

At this time, we go the gentlelady from California, Ms. Speier.

Ms. SPEIER. Mr. Chairman, thank you.

Thank you, Director Jones.

I think this hearing helps me solidify is the importance of having another hearing to talk about storefronts in general, Mr. Chair-

man. I don't know about you but I want to know how much money we are spending on this kind of activity. Mr. Jones, maybe you can tell us. How much do you budget for storefronts a year?

Mr. JONES. We don't budget for storefronts. We budget for operations. In looking at some of the basic information on this, there is the cost of the site.

Ms. SPEIER. We need to find out how much you spend. You have 37 of these storefronts. I certainly would like and probably the Chair as well documentation to tell us how much was spent on these storefronts and what was recovered as a result.

I was with our U.S. attorney this morning who said you actually had a very successful one in Gilroy, California called Operation Garlic Press. Where do you come up with these clever names?

Chairman ISSA. Gilroy and garlic, that is not all that clever.

Ms. SPEIER. It is about taking advantage of the fact that it is the garlic capital of the world.

She indicated to me that there were some 92 persons that were charged or at least found to be gun running. I think we need to have a better sense and a better accountability of how much money is being spent on each of these operations and why certain areas are picked and others are not.

Chairman ISSA. Would the gentlelady suspend for a moment?

Ms. SPEIER. I certainly will. Just give me extra time.

Chairman ISSA. Director Jones, there has been a series of questions on a bipartisan basis. Maybe to cut short the need for those questions, would you agree to prepare a secure briefing for the committee that would include essentially what Ms. Speier is talking about but expanding on cost, all of the operations and obviously because the earlier briefing we had alleged there was only one in Milwaukee that was flawed and now we have similar situations in others, a more expansive ability to answer questions on the good, the bad and the ugly, if you will of these various operations around the country?

Is that something you could give us a timeline and commit to that we would make the committee available?

Mr. JONES. I think it would be of value to educate because I think these storefronts in particular are the ones that had issues but as Congresswoman Speier says, there have been some successful storefronts. They are a valid technique.

I think it would be of value. We can work with staff to get that in the appropriate venue because again, we always have law enforcement sensitive, we have techniques and don't want to inadvertently educate bad guys.

Chairman ISSA. I would appreciate it. Today's hearing, Ms. Speier and I are both aware, is on some flaws that you are working on but I think it would be helpful. We would probably bring this room into a secure mode and a time to be arranged if your folks before the end of the hearing can give us an estimate, we will make that time available in a few weeks.

Ms. Speier, thank you. It was time to ask the question. The gentlelady's time fully continues.

Ms. SPEIER. Thank you.

I also want to alert you to a program called Operation Lipstick that started in Boston. It is a program focused on women. Since

more than 50 percent of gun trafficking cases involve straw purchases, and guns purchased by women are two times as likely to be used to commit a crime, they are working in the communities to try and get the word out to women who tend to be the girlfriends and wives to go in and buy the guns, that they become accomplices of crime as well. I think it is one of the kinds of activities that we should be looking at as well.

I also want to point out that you have the ability to recommend to the President that he no longer allow the importation of Russian bullets or assault weapons. George H.W. Bush did that by Executive Order. It was enhanced by President Clinton. It expired under President George W. Bush. So the importation of the guns and bullets continues.

We have a case in California where a State senator was willing, for a campaign donation, to provide an SEI undercover agent with guns and shoulder missiles from the Philippines. We have some other areas we can look at and I hope you will take that into account.

The Milwaukee Journal Sentinel suggested that the ATF storefront operation was actually generating crime. I would like for you to respond to that allegation.

Mr. JONES. That is a concern when we design a storefront operation. We need to have indicators, for example, from the local police department as to whether or not there has been a spike in burglaries. For example, we know there were issues with respect to folks who purchased weapons and then resold them.

That is always a phenomena that you have to maintain a certain level of risk to make sure that is not happening.

Ms. SPEIER. Let me ask you this. Were they actually selling or purchasing guns for sky high prices?

Mr. JONES. From what I have seen, the prices were comparable to the black market price. The price that we paid in these operations for a gun really is not what is listed at lawful FFL; it is a black market gun. These are crime guns, so there is value on them. If it has an obliterated serial number, for example, it has great value.

Ms. SPEIER. For clarification, were any of these firearms that were purchased and sold at those storefronts?

Mr. JONES. No.

Ms. SPEIER. I think that is very important.

Mr. JONES. We do not sell. It is one way. We buy the weapons. We do not sell the weapons.

Ms. SPEIER. Thank you.

My time has expired.

Chairman ISSA. I thank the gentlelady.

We now go to the gentleman from Michigan, Mr. Bentivolio.

Mr. BENTIVOLIO. Thank you very much, Mr. Chairman, Ranking Member Cummings and distinguished members of the committee.

As we all know, one "aw, shucks" can wipe out a thousand "attaboys." In my experience working with ATF over the years, it has always been professional, brave and valiant, but after reading this testimony, I cannot even get my head around what happened in this case.



When I was preparing for this hearing yesterday, I actually thought my staff was playing an April Fool's joke on me. The operation could not have been this botched; this investigation could not have been this mishandled. I am not sure where to even begin.

I do know I have a frame of mind right now after reading and hearing this testimony. I would join any member of Congress who sponsors a bill to keep guns out of the hands of ATF agents. With that in mind, I have just a few questions.

ATF agents recruited mentally handicapped people or people with an IQ in the 50s to assist with this operation. Later these individuals were arrested for their involvement. I taught special education when I was a teacher and was surrounded by these kids. They are some of the best, most caring and nicest people who try their best and want to please. I am appalled that you would use these individuals like this and then arrest them later.

Does ATF even regret using these individuals in this way?

Mr. JONES. Hindsight is 20/20, Congressman. There are lessons to be learned. As I mentioned earlier, there are opportunities for us to do better in terms of situational awareness training and making sure we do it right.

Mr. BENTIVOLIO. In my experience, there is a difference in individuals with low IQ. It is pretty easy to spot. You would think anyone with any life experience could just ask the simple question, is this the person we should be using for this operation. You are going to discontinue using individuals in this way that have this low IQ?

Mr. JONES. To the extent we know that up front at that stage, in an investigation, of course.

Mr. BENTIVOLIO. Has ATF apologized to any of these individuals?

Mr. JONES. I know the person in particular from the Portland operation, we have had some interaction with them but many of the individuals are in the custody of the Bureau of Prisons, unfortunately, so the opportunity for interaction is limited.

Mr. BENTIVOLIO. In the storefront location in New Mexico, ATF agents gave lessons in how to identify a machine gun. At the location in Kansas, ATF agents told a man how to saw off the end of a shotgun. Is it normal for ATF agents to teach heroin addicts and drug dealers how to tell the difference between a machine gun and a semiautomatic weapon?

Mr. JONES. I think it is important to note that when these ATF agents are in an undercover capacity, they have to go into role unless you want to blow the integrity of the operation. Again, you have to make decisions about the cost benefit analysis.

Mr. BENTIVOLIO. Talking about your decisions, earlier you mentioned that before you go into any operation, you do a risk analysis. Did I hear that correctly? You evaluate the risk?

Mr. JONES. Yes, sir.

Mr. BENTIVOLIO. Was one of those highly successful operations in a storefront the one located within 1,000 feet of a middle school? If, that's the case, why wasn't a risk analysis done for that? Why would you put one of these storefront operations where you have criminals coming in with these guns and rifles within 1,000 feet of a middle school?

Mr. JONES. If I am correct in my recollection, I think the case you are discussing is the Portland operation. It was sited poorly in terms of its proximity to a school. Current state is making sure the location is not only secure, but you avoid situations like that. That is after the fact.

Mr. BENTIVOLIO. So you have an ongoing?

Mr. JONES. Three years ago.

Mr. BENTIVOLIO. After action review, what went right, what went wrong and how could we do better?

Mr. JONES. Yes.

Mr. BENTIVOLIO. You have a policy in place applying those things you have learned for future operations?

Mr. JONES. Yes, sir, already in place.

Mr. BENTIVOLIO. Seems like once again you are learning the lessons of how not to do an operation on a regular basis.

Thank you. I yield back.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Missouri, Mr. Clay.

Mr. CLAY. Thank you, Mr. Chairman.

Let me thank also for conducting this hearing to allow me to publicly thank Director Jones and the men and women of ATF for putting their lives on the line on a daily basis to protect communities throughout this country.

One example I would like to share with my colleagues is the storefront operation conducted in my hometown of St. Louis, Missouri. The St. Louis and East St. Louis metropolitan area is consistently ranked in the top five most dangerous cities in overall violent crime.

Director Jones, in your testimony, you highlighted that in April through July 2013, ATF led a 15 week surge including a storefront operation to reduce violent crime in my district. According to several news outlets and other accounts, this surge was successful. Let me repeat for my colleagues, this surge was successful.

The storefront operation was successful, resulting in 159 defendants being charged of which 78 percent were previously convicted felons. In addition, 267 firearms and significant quantities of illegal narcotics were taken into ATF custody.

This enforcement action had a significant impact on violent crime as an analysis by the St. Louis City Police Department comparing crime statistics from January through July 2012 to statistics for the same time frame in 2013 revealed that murder was down 15.7 percent, robbery was down 22.3 percent; and aggravated assault was down 22.6 percent.

Director, my first question is, in enforcement actions like this one in St. Louis, how much of a priority does ATF place on working cooperatively with local law enforcement to address public safety and law and how important is it to reducing violent crime?

Mr. JONES. I think it is absolutely critical. The opportunity we had last year to work an enhanced enforcement operation in St. Louis was probably one of the better operations we have done in my tenure because we brought the full package.

We brought in experts who know how to do a storefront; we brought in experts who did undercover. We worked very closely not

only with the St. Louis Police Department but also the East St. Louis Police Department.

I think it is an example of the pivot that we have made on two things: having a focus, a unified effort with our State and locals in getting the resources we need to the spot. Unfortunately, what we did in St. Louis cannot be replicated all around the country and it is one of the things we have moved to with the mobility model so we can bring access from around the country to do it and do it right or not do it at all. That is particularly important when we do undercover operations.

Mr. CLAY. That is why I take this opportunity to say thank you to you and the men and women of the ATF speaking on behalf of my constituents who want to live in a safer environment, who want their neighborhoods cleaned up, who want those illegal weapons taken off the streets.

What is the impact of violent crime on the youth and people of color in a city like St. Louis and what success is ATF having in disrupting and dismantling gang violence in areas that you target?

Mr. JONES. Unfortunately, there are pockets of violent gun crime that increasingly are involving younger individuals. I call it more disorganized crime. It is blocks, turf and it is ingrained. The challenges are in St. Louis, Memphis, Chicago.

There are areas around the country where we are working very closely to do two things, identify traffickers so we can disrupt the crime gun pool and identify the worse of the worse in terms of the trigger pullers who are often not only teaching downstream a culture of violence but also perpetrating violence themselves. It is the armed career criminals in these communities who are of particular interest to us.

Mr. CLAY. Thank you so much.

Mr. Chairman, we should be supporting these efforts and not trying to conduct witch hunts.

Chairman ISSA. I am sure the gentleman knows we are not. Would the gentleman yield to the Ranking Member?

Mr. CLAY. Certainly.

Mr. CUMMINGS. Thank you, Mr. Clay. I am glad you mentioned that.

I thought I would go back to what the Chairman said earlier with regard to the briefing you are going to give us. In light of what Mr. Clay just said, I think it is extremely important that we give out some of the good stuff that is happening.

I can tell you living where I live, many feel sometimes like they are in a terror zone and it is hard. Trying to get to the very people Mr. Clay talked about is so very, very important. If the ATF has a way of doing it right, I am glad you said what you said, do it right or not at all, it sounds like the kind of tool that would be very, very helpful in neighborhoods like the one I live in.

I am really looking forward to that and I am looking forward to all the changes you are making to make sure you get it right. I hope we will have that briefing very soon.

Thank you.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Florida, Mr. DeSantis.

Mr. DESANTIS. Thank you, Mr. Chairman.

Welcome, Director.

In August 2013, you were sworn in, is that correct?

Mr. JONES. Time flies. I think it was August.

Mr. DESANTIS. I mention that because I am going to ask about some of the issues my colleague from Ohio, Mr. Jordan, asked in terms of ATF's visit to this woman in Texas.

I just want to clarify whatever happened during those instances happened before you came onboard. At this point we are asking you, in terms of responding to Mr. Jordan's letter, to be transparent about what happened. If nothing sinister happened, nothing sinister happened.

We are in a situation where this woman applied for tax exempt status for two conservative leaning groups. After having never had any interaction with law enforcement for 20 years, she was visited by the IRS, OSHA, FBI, ATF and Texas' version of the EPA.

This committee has been consumed with dealing with targeting done by the Internal Revenue Service. We have had high officials in the IRS who have refused to testify and we have had trouble getting documents. I hope you will be a force for transparency.

I understand they had a license for 12 years. Basically, it is a precision metal cutting company. They did the firearms license, thinking maybe we will do firearm parts at some point. They never actually manufactured any firearms parts. Even though they had a license for a while, ATF audited them in February 2012. Do you know the reason why that audit took place?

Mr. JONES. Now that I have had an opportunity to look at the timeline, my understanding is that Ms. Englebrecht's business was issued a Plan B firearms license by ATF in October 2009. In February 2012, they had a routine compliance inspection. There were some minor recordkeeping errors and a warning letter was issued. Then in April 2013, we conducted a follow up inspection and there were no violations, over a period between 2009 and 2013, as simple as it sounds, coincidence and explanations, irrespective of what other agencies were doing.

Mr. DESANTIS. I understand that.

How common is it that given they were not involved in firearms manufacturing at all, I understand they had the license thinking they may do it, devoting the resources to auditing them versus using resources in other areas. I would imagine you guys have limited resources and know you cannot possibly deal with every issue out there, what went into or do you know what went into the decision to focus those two visits on Englebrecht Enterprises given that they weren't even manufacturing any firearm parts vis a vis doing that in other areas that may have been more pressing in terms of the threat they posed to the public?

Mr. JONES. I think there are two things to keep in mind. The investigative function, the regulatory function, we have approximately 700 investigators around the country and thousands of licensees both FFLs and FELs and they do have a punchlist.

If you read the IG report, you know sometimes we have things fall behind simply because of the volume. We have discretionary time when we can focus on naughty FFLs, those few that are naughty and then there is the nondiscretionary time.

A 2009 FFL license issued after a qualification inspection and coming down for a routine compliance inspection within 12 years, I am not sure which field position would cover that but I know both Dallas and Houston field divisions have a pretty vibrant inspection schedule because of the number of licensees down there.

Mr. DESANTIS. You would definitely state that it would be inappropriate if her filing for tax exempt status for conservative leaning organizations influenced ATF in any way, you would admit that would be totally inappropriate if something like that were to happen?

Mr. JONES. That is not part of our practice. We have our hands full trying to keep up with the volume of inspections required, qualifications, follow up compliance and people work very hard on the inspections front. They are doing the best they can. That is not into the mix of who ends up on the compliance inspection.

Mr. DESANTIS. I appreciate your time today. I would just reiterate the Chairman and Mr. Jordan, if you could just get us answers to that letter in due time, we would really appreciate that.

I yield back. Thank you.

Chairman ISSA. I thank the gentleman.

We now go to the gentlelady from New York, Mrs. Maloney.

Mrs. MALONEY. I thank the Chairman and Ranking Member for holding this hearing.

Director Jones, welcome.

I know the nature of today's hearing is about ATF's undercover storefront operations but we have never had the Director of the ATF before. I would like to ask you some questions related to ATF hearings we have held before specifically on the problem of gun trafficking.

In 2001, the House Oversight Committee had one of your special agents, Peter Forcelli. I asked him whether criminal penalties were so weak that federal prosecutors are discouraged from pursuing cases involving the so-called straw purchasers, those who buy guns and sell to known felons and others who legally cannot have them.

He testified in his written and oral statement that the current straw purchasing laws "are toothless." That is what he said. He further said that existing gun laws do not provide law enforcement officials the tools they need to successfully stop the flow of illegal guns to Mexico. He also testified that in his view, Operation Fast and Furious was a partial consequence of these deficiencies.

It is an issue of great concern in the country. Ms. Speier mentioned the lipstick cases where they are trying to inform women but shortly after Sandy Hook, in western New York in 2012, a week or two afterwards, there was a terrible case where a prior felon was released and a straw purchaser got him a bunch of guns.

He then put his house on fire and when the police and fire department came to put the fire out, he mowed them down, shot them. Certainly if this woman had known there would be real penalties, I doubt she would have been out there buying guns for him.

These agents testified in that hearing that don't even bother to prosecute or refer for prosecution because the penalties are so weak that you are not even doing anything. It is almost not worth the time of law enforcement.

In response to that, I offered a bill that made trafficking in guns a felony. I find it almost unbelievable that trafficking in illegal guns is not a felony. It increases the penalties on straw purchasing.

An incredible amount of law enforcement across the country came out in support of this legislation. It is bipartisan. An NRA member, Scott Rigell, is one of the prime leaders on this, as well as Ranking Member Cummings and a former prosecutor from Pennsylvania, Representative Meehan, has been very active on it.

It seems to me if we don't give the tools to law enforcement their job, the testimony from these agents was we don't even bother to prosecute because the penalties are so weak, it is not worth our time to pursue it.

My question is, do you think we should have stronger laws and penalties against straw purchasers? Do you think it would stop the practice that has been such a terrible problem in our country? According to an ATF report in 2000, "straw purchasing is the most common channel of illegal gun trafficking, accounting for almost half, 46 percent of all investigations."

Do you think stronger penalties would help bring down that number? If you could comment on it, I think it is a very important issue. Keeping guns out of the hands of criminals should be a top priority.

Law abiding people can own guns. It is not aimed at them. It is for criminals, drug dealers, gang dealers.

Mr. JONES. Congresswoman, I think that is one of our focuses in our overall mission. As I mentioned before, a federal firearms trafficking statute would be helpful. I know there are increasing efforts across the country by U.S. attorneys, with whom we work closely, to do more straw purchasing or providing a gun to a prohibited person. I know that the U.S. Sentencing Commission has recently revised their guidelines.

To get back to your point, a federal firearms trafficking statute would be helpful. I would push back a little bit about these cases are not being done. I think they are being done by U.S. attorneys around the country. The challenge is more getting the fact pattern.

The lipstick phenomenon, a criminal defendant who has no criminal history who may be in a relationship with a bad guy and ends up in federal court for the first time is different from someone who has a pattern of purchasing weapons, doing the sort of aggregation and selling them on the black market.

Mrs. MALONEY. The testimony of your agents was that it was a slap on the hand or a paper notice. Possibly we should do a joint GAO request to find out how straw purchasers are treated when they are convicted. That was the point they made. They don't try to convict because the penalties are so weak.

The bill we worked on increases penalties. I believe it is supported by your department and other law enforcement. I think it is worth looking at. I think a GAO report of what does happen to traffickers would help.

Chairman ISSA. I thank the gentlelady.

We now go to the gentleman from Georgia, Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman.

This is an issue for me. I thank you for your service and also the military as well.

As I was growing up one of the things I always found was when one officer did something wrong, everything else got tight and you were basically assuming that everybody was the same.

This disturbs me in the sense that the storefront operations were overall looked after from DC but handled in the agency in the different areas. I am going to concentrate specifically on Atlanta because some of your comments today are not consistent with actions that happened in Atlanta and I want to talk about that.

Atlanta Blaze, the storefront operation, bought stolen goods, including guns stolen from police squad cars. How many stolen police weapons did ATF agents in Atlanta recover?

Mr. JONES. I know a bit about Atlanta Blaze because it is one of the historical ones. It is not something that was going on when I came onboard.

Mr. COLLINS. I understand that but today's hearing title was undercover storefront operations involving all of these. I would have expected you to have been at least briefed on all the ones that were going on especially given the problems that existed in many of them.

Mr. JONES. I do understand that in Atlanta there were some weapons that ended coming into the storefront that were the result of thefts steps from other police officers.

Mr. COLLINS. What did the ATF agents do with the weapons when they purchased them and where are those weapons now?

Mr. JONES. I believe the case is completed. I am not certain as I sit here today where the weapons are now.

Mr. COLLINS. Are you aware that the Atlanta Police Department spent considerable resources interviewing witnesses and attempted to recover the weapons because ATF agents did not report the guns as recovered? Why didn't the ATF properly return the guns to the Atlanta Police Department?

Mr. JONES. I am not aware of that.

Mr. COLLINS. Did you look over these storefront operations before coming to testify today?

Mr. JONES. I spent a lot of time with Fearless, I spent less time with the four that occurred before I got onboard at ATF.

Mr. COLLINS. Knowing that this was overall, I am concerned in the sense that this was a storefront and there were multiple operations to know this.

Going back to another one, there was an ATF agent who bought one high point pistol stolen from a police car Christmas 2010. As of November 2013, the Fulton County police department still had the firearm listed as stolen. A representative said the department had not received any notification that the weapon was recovered.

I will ask the question and I will assume the answer at this point, has the agency returned it to Fulton County?

Mr. JONES. I am not sure.

Mr. COLLINS. Has the AFT informed Fulton County that the ATF had recovered this weapon?

Mr. JONES. I am not certain.

Mr. COLLINS. This is why I said earlier the interesting part to me was that in St. Louis, there seems to be this wonderful cooperation between local enforcement and the ATF but in Atlanta, there wasn't and right now we are still looking at this.

I will ask another question. Does ATF have a policy about notification of other law enforcement agencies when weapons or other possessions are obtained by ATF agents either by purchase through a storefront operation or otherwise?

Mr. JONES. I know that we do run traces at a storefront.

Mr. COLLINS. That is not what I asked. I asked do you have a policy of notifying other agencies when they recover or buy stolen police equipment?

Mr. JONES. I don't want to step out of bounds here and say for certain that we do but I would be surprised if we did not have a policy about recovering weapons that are traced back to a law enforcement.

Mr. COLLINS. That is concerning in itself. I am going to ask that be made available to my office and the committee as soon as possible. That should be an easy find. I wonder if there is someone behind you who probably already has that information. If you don't have a policy, that needs to change. If you do have a policy, I would ask why it is not being followed in this situation.

Talking about the cooperation between agencies in St. Louis that my colleague spoke of, why was this run so seemingly different in Atlanta where you have other law enforcement agencies spending a lot of time trying to track down their own weapons when ATF had the weapons? Why is there such a disconnect here?

Mr. JONES. Let me first say we have good working relationships with Atlanta and Fulton County and all over Georgia.

A disconnect and an individual circumstance, an isolated circumstance about the reporting mechanism, going back and people looking for weapons and not cooperating, that is disappointing to me to hear. I understand your concerns about the lack of communication.

Mr. COLLINS. I am still concerned about where these weapons actually are. You used an interesting word a moment ago. Based on the questions about the woman who was investigated, you said, you keep a list and you used the word naughty part. It is very interesting to me because I think that wording is good because it reminded me of the song we're making lists, we're checking it twice to see who is naughty or nice and maybe the naughty part here was they applied for a C4 permit. That might be why they got more scrutiny than they should have.

This Atlanta operation bothers me. I do want to hear those answers and please get those to my office and the committee as soon as possible.

Thank you for your service.

Chairman ISSA. I thank the gentleman.

We now go to the gentlelady from New Mexico, Ms. Grisham.

Ms. GRISHAM. Thank you, Mr. Chairman.

Director Jones, I appreciate that several times during this hearing, you have talked about the problems you are aware of, your obligation and efforts with ATF and that these efforts be productive and minimize risk to the public and maximize the operation and to take responsibility for the things that don't work.

I absolutely appreciate that. Considering as many of us have the focus on local operations and that ATF did conduct a storefront operation in Albuquerque in 2010, I think I share an obligation to the



same degree to assure that the problems with the Inspector General and the ATF and the public are adequately addressed.

Like many other members here today, I am specifically concerned about how our agency interacts with persons with mental illness or mentally disabled individuals. I want to get right to policies and training.

It is my understanding that the FBI and local law enforcement, in fact I know unequivocally that local law enforcement in Albuquerque uses CIT, crisis intervention teams and their effort is to calm persons who have a mental illness, disorder or an issue in lieu of arresting them. We know that minimizes risk frankly on both sides.

I did a quick search right here in the committee to see how easy it is to find what kind of training and policies exist. In fact, it is clear that there is substance abuse recognition, cultural sensitivity, there is training on developmental disorders, personality disorders and I could go on because the list I found in a quick search was fairly exhaustive giving me the impression that there is a considerable body of training to help someone identify when they are dealing with a population or individual in this situation.

I want to know do folks at ATF take part in this training?

Mr. JONES. As stated before Congresswoman, that is something that is really important to us given some of the things we have learned over the last year or so. It is not only unique to ATF but I think the Albuquerque Police Department and police departments around the country are in a position where they need to have enhancement about not just people who are developmentally disabled but people with mental illness because those circumstances, particularly in the work ATF does, where you have street level interaction, it is important to have.

Ms. GRISHAM. You repeatedly say that what you do is deal with sort of conduct, that there is no way to identify an individual per se. I also recognize you have to be cautious about creating an environment where there is discriminatory in every operation.

You have known for quite some time. These trainings have been available and around for a long time, at least a decade. That is my personal knowledge in my community. I guess we could argue today in a place like Albuquerque they might need some significant retooling but did you do that a year and a half ago, are you doing that training right now given the circumstances?

Mr. JONES. Absent specific public safety threat, we don't target developmentally challenged individuals. As you mentioned, we target convicts.

Ms. GRISHAM. You are clearly engaged now in a situation where you know you have these problems and as a result, it seems to me that training is a good thing. Are you engaging ATF in these training protocols that clearly exist in like operations and for like law enforcement officials in the Department of Justice and in local police forces?

Mr. JONES. We have had discussion about how we integrate that into our training.

Ms. GRISHAM. But you haven't done it, you are looking at it?

Mr. JONES. The ones that you identified, the sort of prepackage, whatever the Los Angeles Police Department has done.

Ms. GRISHAM. I am going to guess that these are packages, if we are going to call them that, I would hope these are sophisticated, evidence-based training protocols that exist in the Department of Justice that should be readily available for a model like ATF. I am flabbergasted that they are not available to you and that you are not utilizing them.

It seems to me you guys don't have any written policies or procedures to deal with these issues. I would ask, because my time is up, the following. My expectation is that you share a role in making sure we have best practices, we mitigate risk both to officers and absolutely to the public, that you immediately replicate these policies and procedures, make them relevant to the operations you are responsible for and you bring the evidence that you have a protocol and a program in place for training immediately back to this committee for our review and discussion.

I don't understand why that is not the case.

Chairman ISSA. I thank the gentlelady.

We now go to the gentleman from Arizona, Mr. Gosar.

Mr. GOSAR. Director, thank you for being here.

What was the ATF like before you were sworn in?

Mr. JONES. Generally speaking, I had a lot of interaction going back 20 years from an AUSA time. ATF was one of those organizations I enjoyed working with both as a prosecutor and as a US attorney the first and second time.

I have a lot of respect for the work they did with me personally and Minnesota generally. The developments that happened in certain field divisions in your part of the world is unfortunate.

Mr. GOSAR. That is where I want to go. Wouldn't you agree we had some bad habits down in the Phoenix field office?

Mr. JONES. Sometimes bad things happened.

Mr. GOSAR. You said there were not. There are those of us on one side of the law and those on the other side of the law have to be held accountable in the same way, wouldn't you agree?

Mr. JONES. Yes.

Mr. GOSAR. Looking at it from the outside—I am a dentist and a politician, Mr. Jones, so I look at structure. You have to hold people accountable for improper decisions, do you agree?

Mr. JONES. I agree with that, sir.

Mr. GOSAR. There are certain actions that require termination?

Mr. JONES. Depending on the actions, in the government setting, yes, there are certain things that would cross that line. The public sector has a little bit more structure than the private sector in terms of terminating somebody's employment.

Mr. GOSAR. The lack of faith from the private sector or our constituents is that bureaucrats are not held to the same accountability. Would you agree with that?

Mr. JONES. Not necessarily.

Mr. GOSAR. If you get on main street America, they find that bureaucrats have a whole different aspect of accountability.

First, I would like to enter into the record a letter to you from Josephine Terry, Brian Terry's mom.

Chairman ISSA. Without objection, so ordered.

Mr. GOSAR. I want to highlight some of the inquisitions here.

You are familiar with Inspector General Michael Horowitz's comprehensive report or review of ATF's Operation Fast and Furious and related materials, are you not?

Mr. JONES. I am.

Mr. GOSAR. In that case, and I want to cite for her because she does it so eloquently, "identified several current Department of Justice and ATF employees who bore particular responsibility for the many mistakes made in Operation Fast and Furious. These employees included ATF agents Hope McAllister, David Voth, George Gillett, William Newell, Emory Hurley, and Michael Morrissey.

"I understand these individuals have continued their employment with the Department of Justice despite the findings of the Inspector General's report."

It has come to our attention that the ATF's Professional Review Board had previously recommended termination for some of these individuals. Is that true?

Mr. JONES. We provided that information.

Mr. GOSAR. Is that true, yes or no?

Mr. JONES. That material has been provided.

Mr. GOSAR. Yes or no.

Mr. JONES. That material has been provided.

Mr. GOSAR. That was a yes, right?

Mr. JONES. Yes.

Mr. GOSAR. Why weren't these followed through?

Mr. JONES. I am not quite sure I understand.

Mr. GOSAR. Were there any terminations? For example, let's take one, William Newell. Were they then fired?

Mr. JONES. There are people who have retired, there are people who have been disciplined.

Mr. GOSAR. I would like to enter in the record a letter from the U.S. Department of Justice to you, Mr. Chairman, dated April 1, 2014 outlining summaries.

Chairman ISSA. Without objection, it will be placed in the record.

Mr. GOSAR. It doesn't show that. There is no accountability for Fast and Furious.

From the guy who ran his own dental practice on accountability, it seems when we come into the place of service, the head of the ATF, that it is dysfunctional at least when you start looking at the Phoenix office, when you have such a quandary with Fast and Furious, we would actually hold people accountable.

This was hardly unaccountable. The Brian Terry family has no answers whatsoever, wouldn't you agree?

Mr. JONES. It is unfortunate that communication has not been what it should be in terms of anyone who has lost a person in the line of duty.

Mr. GOSAR. I want to highlight it even further because you had a conversation with the gentleman from Atlanta.

The Terry family was talking to Michelle Terwilliger, a special FBI agent, about communication and about Atlanta. It seems you have problems all the way around in communication with other law enforcement officers.

"Imagine to the shock, I am learning that the members of the ATF field division and the US Attorney's Office in Arizona had chosen to keep the important piece of information about one of those

guns found at the Brian Terry murder was not brought forward.” Once again, a gentleman was talking about Atlanta not talking.

We understand there were problems in Milwaukee with the FBI and communications. Does ATF have a problem playing with other law enforcement offices?

Mr. JONES. No.

Mr. GOSAR. My question to Mr. Meadows is why would we want to play in Chicago with the highest rate of death with guns, why would we want to work with those? It is just an exercise in communication.

Chairman ISSA. The gentleman’s time has expired but you may answer.

Mr. JONES. We work very closely with federal, State and local in Chicago and every place that we are in. Our partnerships with both our federal brothers and sisters within the department and at the local police level are actually critical to our performing our mission. That partnership includes communication.

While it is not perfect across the country and while personalities do impact sometimes that level of communication, organizationally, that is something we highly value and couldn’t do our job without that partnership.

Chairman ISSA. I thank the gentleman.

We now go to the gentlelady from the District of Columbia.

Ms. NORTON. Thank you very much, Mr. Chairman.

Thank you, Mr. Jones.

I was at another hearing but I did want to be here to hear your testimony and at least ask a question.

First of all, I commend the ATF for looking to innovative risk bearing ways to get at gun running in our society. I am going to defer to your expertise. I know this much, thugs consistently outsmart law enforcement. We can stay ahead of them by tailoring to the location to what you think will work there.

If all we do is second guess without having the available expertise, then I am not sure we will get at this. I am not going to tell you or wonder why you haven’t done one of this storefronts and this or that city. I would like to know off the record whether there has been any such storefront here in the District of Columbia. I would appreciate your writing our office on that question.

We would be a city not unlike Milwaukee. Milwaukee, like the District, has declining crime. They had one of these storefronts. I don’t know if we do but they had one and some guns were stolen from an agent’s vehicle. That is one of the risks that you always have when there is a storefront or for that matter, in any area where there are people who want to get at guns and use them.

After the Milwaukee experience, you ordered the Office of Professional Responsibility and Security Operations to conduct a full investigation. I have seen that report. I am pleased to say it pulls no punches.

I do know that the field agents, in the absence of guidance, were trying to put together ways on their own of how to run a storefront operation. That bothered me, that there was no guidance on something as risky and I think, frankly, worth the innovation as one of these operations.

After that Professional Responsibility report, did you take any action in response, Mr. Jones?

Mr. JONES. We took actions both with respect to reviewing how they were operated. We took action with respect to the lessons learned both from a resource standpoint, from a management standpoint and we took action to try to minimize the chance that those issues identified in Milwaukee didn't happen again.

Ms. NORTON. Mr. Jones, there was no written guidance. Did you develop a manual or other operations guidance after the Milwaukee incident?

Mr. JONES. That is one of the things that did emerge from that, the level of understanding, because we have a cadre of experienced agents but sometimes that knowledge is difficult. One of the things we have done is generate sort of a best practices manual.

That is separate and apart from what is in our order with respect to undercover operations and specifically storefront operations. That is more the parameters of what the rules of the road are. This secondary document and the follow on training, when they are done, is sort of a go by.

It is law enforcement sensitive but it does talk about the things that you should consider, the things that need to be considered to successfully operate a storefront. That has been memorialized in a storefront operations manual.

Ms. NORTON. I am not sure the committee staff has had an opportunity to review this manual. Have you submitted the manual?

Mr. JONES. I believe because of the sensitivity with the methodologies that it may have been reviewed. We have had staff over to ATF headquarters to look at manuals.

Ms. NORTON. I would appreciate your submitting the manual so the committee could take a look at it. I think it would help, with some the questions that have been raised, for people to know there is written guidance and how that guidance proceeds.

Chairman ISSA. If the gentlelady would yield?

Ms. NORTON. Yes, Mr. Chairman.

Chairman ISSA. I would certainly join with you. I do want to be careful that manuals that are not available to the public, if we take them into the committee as committee documents, then they become broadly available normally.

Ms. NORTON. I certainly didn't think they would become broadly available because then the thugs would have them.

Chairman ISSA. If the members of your staff would like an in camera review and after an in camera review you want specific portions to be provided to the committee, I would join with you in it but I would prefer that we continue the process whenever we have that kind of sensitive information of having staff see it and only if we believe we need some portion do we request that portion. It is also less burdensome on the agency.

Mr. JONES. I understand there was an invite to have staff come over to our shop and look at it. As the Chair mentioned, if anything peaks your interest, we can follow up but there is a certain level of sensitivity about an operational manual.

Ms. NORTON. I thank you, Mr. Chairman, and I thank you, Mr. Jones.

I would like my staff to be able to see some of this as well because as I said, this is a city that had high gun incidents go down and we would be very interested in looking at what you are doing with respect to the storefronts.

As long as my staff could also see that, I would certainly understand the admonitions of the Chairman and Mr. Jones.

Thank you very much, Mr. Chairman.

Chairman ISSA. We will now go to the gentleman from Kentucky, Mr. Massie.

Mr. MASSIE. Mr. Jones, thank you for coming to testify today. It is quite an honor and opportunity to be able to ask you questions.

I am an avid gun collector. I try to convince my wife that these are investments but she says how are they investments if you are never going to sell them. She has a point but it causes me to wonder and also watching some collectors who have been prosecuted and arrested but collectors and the firearms dealers and the ATF, itself, wouldn't be better served if we had some very bright lines drawn between what is a straw purchaser and who is not, and also who is and is not a dealer.

You are kind of left to interpret a very gray area. I have always wondered wouldn't it be helpful if Congress defined that line a little bit better for you or somebody did between dealer and collector, for instance, the number of sales per year?

Mr. JONES. It is always helpful to have Congress define in a statute where certain lines are drawn. It is difficult, on occasion, for us with regulatory authority to do that with clarity all of the time both because of the process and the dynamics as you mentioned.

Mr. MASSIE. You think it could be helpful if we did. I just think it helps people who want to obey the law to have it drawn very brightly. That is something I would advocate for.

This next question may not seem related to this hearing but it is because maybe we can avoid another hearing if I could get one question answered.

Are you familiar with Ares Armor recently raided in California? They make 80 percent polymer loaders for AR-15s? Are you familiar with them?

Mr. JONES. I am familiar with that. That is an active criminal investigation so I will say up front there are limitations about that.

Mr. MASSIE. Understood. The search warrant is public and that sort of thing so I think we can talk some about it.

One thing that was requested was a list of their 5,000 customers. Ares Armor maintains they are not in the business of manufacturing firearms. If this is true, then what would justify the ATF having a list of their 5,000 customers?

Mr. JONES. I hope you understand, Mr. Massie, that there are certain things that are on the public record particularly with the TRO. My understanding is the search warrant is still sealed and it is an active criminal investigation.

Generally speaking, I think in those circumstances where we are investigating the potential, this is specific to Ares Armor, one of the things of interest for someone who may be illegally manufacturing firearms is the list of who they have sold them to, not necessarily to look at the list but to see if there are witness leads about the circumstances.

Mr. MASSIE. That will be up to the court to decide whether Ares Armor was manufacturing firearms, not Congress and not the ATF.

Mr. JONES. I think in between there is prosecutors involved also.

Mr. MASSIE. Right, but the jury gets to decide.

Mr. JONES. Yes, they do.

Mr. MASSIE. If the jury finds they were not manufacturing firearms, can we have some assurance from you that list of 5,000 people they were selling material to won't be kept by the ATF?

Mr. JONES. I think in the normal circumstance of investigations that would be something that would migrate into a prosecutor's office and at the conclusion of a case.

Mr. MASSIE. I would hope the 5,000 names required and if Ares was found not to be manufacturing firearms, that would destroy that list because the list was otherwise ill gotten.

A quick question on this particular case in Wichita, Kansas. Agents let felons leave the store with guns on at least three occasions. One man brought in two AK-47s to sell but agents only had enough money to buy one. The man, a felon, was allowed to leave with the other AK-47. This was at Bandit Trading in Wichita, Kansas, one of the storefronts.

Why would ATF agents let a felon leave a storefront with an AK-47?

Mr. JONES. I am not certain of all the circumstances but I think in an undercover setting, first and foremost, we may not know the individual is prohibited until after the fact. Someone who comes into the store, even if there is a suspicion that they are crime guns, the status of the person selling the gun isn't always known.

Mr. MASSIE. Do you think the agent should have alerted local law enforcement that there was a felon in possession of an AK-47?

Mr. JONES. I think if they had an opportunity with cover teams and the right staffing, that the circumstances may warrant away from the premises some intervention.

Mr. MASSIE. According to my information, this weapon was never recovered. Is that true?

Mr. JONES. I am not certain as I sit here today of all the details of that particular circumstance other than the fact that there may have been a lack of knowledge about someone being prohibited when they tried to sell the weapon.

Mr. MASSIE. If you found out your agents knowingly let a felon leave the store with an AK-47, would you be concerned?

Mr. JONES. Yes.

Mr. MASSIE. Would you follow up on that for us?

Mr. JONES. Yes.

Mr. MASSIE. Thank you.

I yield back my time.

Chairman ISSA. I thank the gentleman.

Director, I am going to be very brief with one quick round of questioning.

Chairman ISSA. The Monitored Case Program, the subject today, how frequently was Operation Fearless briefed to the ATF headquarters, to your knowledge?

Mr. JONES. We spent a lot of time on the Monitored Case Program because one of the recommendations in the IG report on Fast

and Furious was the lack of communication as to what was going on out in the field.

The Monitored Case Program we have in place isn't the same as it was a year ago or two years ago. It has grown and we have learned more. I think at the core of it is the push/pull dynamic of what comes up and how we get it, and what is pulled up and how we get it.

The circumstance with respect to Operation Fearless was it did not migrate up the food chain. It got briefed up and not all the information on the ground got briefed to the SAC which means it didn't get to the Deputy Assistant Director. That is a phenomena we have worked hard to make sure both by looking at our own case management system and proactively engaging with the special agents in charge about what is coming up.

Chairman ISSA. If I could interpret that accurately that would mean that the answer to the question of how frequently was headquarters briefed, the answer was you weren't. It didn't get to you is what you are saying.

Mr. JONES. There are a number of cases on the Monitored Case Program that I don't get a personal briefing on.

Chairman ISSA. I actually asked about headquarters so I was including your deputy.

Mr. JONES. The Deputy Assistant Directors do, based on their region, have regular interaction. Fearless was up to the Deputy Assistant Director in terms of the information flow but I think the glitch that we learned was what the special agent was hearing was positives and not problems.

Chairman ISSA. Is it fair to say that although our information shows that Operation Fearless was briefed to headquarters nine times, that, in fact, those briefings were insufficient to uncover the flaws in Operation Fearless?

Mr. JONES. Yes.

Chairman ISSA. How often were you briefed on Monitored Case programs in a setting in which you knew you were being briefed on Monitored cases?

Mr. JONES. We have monthly meetings.

Chairman ISSA. Essentially in 12 months, 12 times, roughly?

Mr. JONES. Yes.

Chairman ISSA. Were you ever briefed on Operation Fearless separate from the Monitored Case Program in some capacity? Did the deputy come in and say I want to talk to you?

Mr. JONES. Me personally?

Chairman ISSA. Yes, you personally.

Mr. JONES. No.

Chairman ISSA. No. This is redundant somewhat but did you ever meet with anybody at main Justice concerning Operation Fearless?

Mr. JONES. No.

Chairman ISSA. Did you ever meet with anybody at DOJ's Criminal Division about Operation Fearless?

Mr. JONES. In terms of time frame?

Chairman ISSA. If the answer is yes, then the follow up would be, when was the first time and what was the subject?



Mr. JONES. There were discussions with the Justice Department and particularly the IG when we launched internal affairs to go out there and do the dive but until certain issues came to light, no. This was field division, United States Attorney's office, Milwaukee Police Department—February to September of 2012, so it is not an extended storefront operation. It was up and down pretty quickly. Then the concerns were brought to light.

Chairman ISSA. Would it be fair to say that your first meeting with DOJ, the Criminal Division, would have been after the end of Operation Fearless as an ongoing operation?

Mr. JONES. In terms of the Criminal Division, I don't recall any interaction. I briefed up on challenges we were having and we talked to the United States attorney about cases generated out of that operation.

Chairman ISSA. You didn't talk with anyone at the DAG's office or anyone of that sort?

Mr. JONES. We have regular meetings, sort of here is where we are.

Chairman ISSA. Is it possible that in the last 12 or 14 months, you did have conversations about Operation Fearless with DAG?

Mr. JONES. I think it would be fair to say we have had conversations about storefronts generally but I don't recall having specifics on this particular operation in Milwaukee.

Chairman ISSA. Final question, I guess, following up on that. This has been an area of interest of the Deputy Attorney General, the storefronts and the concerns about operations?

Mr. JONES. Collectively all the DOJ enforcement community, US attorneys and the Deputy Attorney General have had a lot of discussions about managing risk in the last several years. New policies across the board within the Department of Justice are applicable to all law enforcement and US attorney offices.

There have been discussions with the DAG about managed risk and information flow generally.

Chairman ISSA. Mr. Cummings, do you have anything?

Mr. CUMMINGS. Yes.

Chairman ISSA. If you don't mind, I will let you close. We will go to Mr. Jordan briefly.

Mr. JORDAN. I thank the gentleman.

I want to be clear, you were Acting Director of ATF when ATF visited Ms. Englebrecht's place of business. You have been Acting Director since August of 2011, to my understanding? Have you been Acting Director since August 2011?

Mr. JONES. My first day in that building was I think the last day in August.

Mr. JORDAN. You were Acting Director when ATF visited Ms. Englebrecht in 2012 and 2013?

Mr. JONES. Yes.

Mr. JORDAN. I mentioned briefly at the end of my first round Mr. Tom Perez. We had a hearing in this committee regarding what took place in St. Paul, what we have called the quid pro quo.

I am interested because Mr. Perez was in the Civil Rights Division and Ms. Bosserman is the person heading the investigation in the IRS. I am curious about your interaction with Mr. Perez in

your role as US attorney but while you were also Acting Director of ATF.

When he contacted you about the Newell case and the fact that you had career attorneys recommending intervention, that was subsequently changed and you did not intervene based on conversations you had with Mr. Perez. Can you walk me through that briefly?

Mr. JONES. It is more than briefly. I had a lot of discussion during my confirmation process about those interactions. It is fair to say I have never talked to Mr. Perez about anything related to Ms. Englebrecht.

Mr. JORDAN. How did it happen you had career attorneys tell you we need to intervene, this is a good case, \$62 million potential fraud against the Federal Government and then you decide not to do that?

During the hearing we had on this issue in this committee, the Democratic witness told us that is highly unusual when you have career attorneys recommending you take a certain course of action and then it is subsequently changed. How was that decision reached? Did you agree with Mr. Perez, did you ultimately sign off on it, how was it decided?

Mr. JONES. That is something beyond the scope of why I am here today and I am not really prepared to go into a deep dive as to what went on with my experiences as United States Attorney.

Mr. JORDAN. I would argue it has a lot to do with this committee. We have spent countless hours investigating the IRS situation and how Mr. Perez at the Civil Rights Division, how Barbara Bosserman gets to be the lead investigator in the Justice Department investigation of this. We think Tom Perez is involved. I am trying to figure out how this may relate.

We know Mr. Perez flew to St. Paul, got things changed, we know the United States Government did not intervene even though there were millions of dollars at stake we could have potentially recovered. We know that didn't happen after Tom Perez talked to you and after your career attorneys said we should intervene. I think it is highly relevant.

Mr. JONES. I provided a substantial amount of information to Senator Grassley's staff on the record that I am sure they would share with you transcripts of my prior testimony.

Mr. JORDAN. Mr. Chairman, I yield back.

Chairman ISSA. I thank you.

We will now go to the Ranking Member.

Mr. CUMMINGS. Director, first of all, I want to thank you for your testimony. It has been very helpful. I think you shed a bright light on the good, the bad and the ugly, and I do emphasize good. There is a lot of good here. On the other hand, as you said, it has to be done right.

As I was sitting here, I was thinking you can never say thank you enough. Again, I say thank you to you and to the ATF. Let me tell you why. On Good Friday of last year, I went to observe an autopsy of a young African American man who had been killed—shot to death by so-called friends. I intentionally wanted to go and see an autopsy of a gunshot victim.

It was interesting when I watched that autopsy they apparently shot him in the head right behind the ear and it came out over the eye, one bullet. When I looked at the hole, I swear it looked to be about half the size of a penny on one side but on the other side, it looked like the size of a quarter.

Then they showed me something like a CAT scan of what happened when the bullet went through his head and how everything just exploded. I followed that case because I was curious.

Then I had the situation with my nephew at Old Dominion who was murdered three years ago. Some people came into his room at 5:00 a.m., a third year honor student at Old Dominion, and killed him, blasted his head. Two days later, I went to his apartment and his brains and blood were splattered all over the walls.

That is what your folks try to prevent. I want them to know that it is so very, very important. They may not get all the thanks and they have been through some hell. I know they have. We watched the Fast and Furious situation and mistakes were clearly made. I was glad to see you come in and that was one reason I went to your swearing in because I had so much hope for this organization because it is so important.

I think we need to make sure under all of these circumstances that we get it right because I think when anything goes wrong, it is wrong but nobody pays a lot of attention to the right. The mission must go on.

There are kids in my neighborhood who tell me they could get a gun if they have the money faster than they can get a cigarette. That is real. You all have a tough situation to deal with but I am so thankful that the ATF exists because if it didn't, we would have to invent it.

The expertise that your people bring, the dedication, I don't want what happened with regard to Fast and Furious to have a chilling effect on any of them. I want them to understand they have a mission that is bigger than they are. It is about trying to make sure people are safe and trying to make sure they address the issues of guns being in the hands of the wrong people doing the wrong thing.

Again, I want to say thank you. I am looking forward to our briefing. I am hoping that the policies that your team has brought together now or put in place will address the kind of issues that came up in Fast and Furious. I am hoping with regard to the store-front situation that things are in place so we don't have to go through this kind of situation again.

I think the best words you could have said, at least music to my ears, are that if we cannot do it right, we are not going to do it at all. It reminds me of my first trip to Israel many years ago. They had a saying which rings in my head. It said, if we are not better, we will not be. I thank you for pursuing the best.

The Chairman and I were kind of joking about who wants this job but we know that it is the love of country, it is the love of trying to make a difference and have an impact in your time on this earth. We appreciate it.

Mr. JONES. With respect to that last comment, I have a lot of friends who ask me too but over the last two and a half to three years, I have gotten to know this organization. I have been to ever field division and met a lot of people outside of headquarters,

agents, investigators, and support staff. They have a great mission and this is really a great organization.

They understand. We all understand that we have to refill that well of credibility because of recent events and mistakes. I share with you without any hesitation that the folks at ATF are dedicated to a very important mission. It is probably the most resilient law enforcement organization I have ever come across.

In the face of a lot of adversity related to both enforcement of the Gun Control Act to recent snafus and mistakes made and for a lot of different reasons, they are tough as nails and are completely dedicated to the mission of making our communities safer from gun violence, arson and people who would use explosives to hurt folks.

It is an honor to be at the helm of this organization.

Mr. CUMMINGS. Thank you very much.

Thank you, Mr. Chairman.

Chairman ISSA. I thank you for your testimony.

We are going to stand adjourned. If you don't mind, the Ranking Member and I would like to see you in the back for a couple of minutes.

Thank you.

Mr. JONES. Thank you.

[Whereupon, at 12:20 p.m., the committee was adjourned.]

## **APPENDIX**

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MATERIAL SUBMITTED FOR THE HEARING RECORD

**Chairman Issa Opening Statement**  
**Undercover Storefront Operations: Continued Oversight of**  
**ATF's Reckless Investigative Techniques**  
**April 2, 2014**

- Today's witness, B. Todd Jones, took over as head of ATF – first as Acting Director and later as Director – in the wake of the Operation Fast and Furious scandal. His mission was to change the culture at ATF and to move the agency in the right direction. This was no small task.
- Two and a half years into his tenure, it is safe to say that ATF has a long way to go.
- Just over a year ago, the Milwaukee Journal Sentinel reported on Operation Fearless, an undercover storefront operation conducted by ATF in Milwaukee, Wisconsin during Director Jones' tenure.
- Everything about Operation Fearless was wrong:
  - ATF agents allowed convicted felons to leave the store armed and dangerous;
  - Three weapons, including a machine gun, were stolen from an ATF vehicle;
  - The storefront was burglarized – \$39,000 worth of merchandise – all because ATF neglected to install an alarm system;
  - ATF exploited a mentally handicapped person with an IQ in the 50s to assist with its store operations – and then arrested him for his involvement

- When we learned about this, Chairman Goodlatte, Chairman Sensenbrenner, Ranking Member Grassley, and I immediately wrote to ATF requesting more information.
- Only after receiving our letter did the Director order an internal review – even though ATF management was aware of all of the operation’s problems.
- In April 2013, ATF briefed Committee staff on this operation. ATF assured us that the botched operation was an isolated incident.
- In December 2013, however, we learned that ATF mismanaged similar undercover operations across the country, stretching from Portland to Albuquerque to Wichita to Atlanta to Pensacola.
- These other storefront operations followed an incredibly reckless pattern: agents allowed felons to leave the store with weapons, agents exploited mentally handicapped people, and agents failed to take precautions to protect the stores from theft.
- ATF’s dangerous tactics may actually be increasing crime in neighborhoods where ATF undertook these operations. These operations do not inspire public confidence. Rather, they make Americans wonder if ATF is a reliable partner in keeping the streets safe.
- The Milwaukee operation, Operation Fearless, was part of ATF’s Monitored Case Program. The Monitored Case Program was created after Operation Fast and Furious to ensure careful oversight of field operations from ATF

Headquarters. Unfortunately, it is clear that in the case of Operation Fearless, the Monitored Case Program failed miserably.

- Today's hearing will explore whether other cases are slipping through the cracks at ATF, even though the Monitored Case Program exists to prevent just that.
- Effective leadership requires accountability. Accountability ensures that mistakes are not repeated.
- Three years after the death of Border Patrol Agent Brian Terry, ATF has yet to fire anybody for their role in Operation Fast and Furious. That is inexcusable.
- Today we will learn whether ATF has held any employees accountable for the dangerously mismanaged Operation Fearless.
- We have been down this path before. ATF has promised to change its culture, implement new policies and procedures, and hold agents accountable for their actions.
- But what good are new policies and procedures if they, too, fail?
- What good are promises of accountability if that accountability never occurs?
- What message does that send to the hardworking ATF agents who get it right? You can be reckless and jeopardize public safety in furtherance of your investigation, but you will not be disciplined for doing so.



- I look forward to hearing the Director's plans to move the agency forward from most recent scandal and finally restore some integrity to ATF.

DARRELL E. ISSA, CALIFORNIA  
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2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MACTVETS: (202) 225-5074  
FEDMAIL: (202) 225-3034  
HONORARY: (202) 225-5051  
<http://www.sight.house.gov>

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### Opening Statement

**Rep. Elijah E. Cummings, Ranking Member**  
**Hearing on "Undercover Storefront Operations:**  
**Continued Oversight of ATF's Reckless Investigative Techniques"**  
**April 2, 2014**

I would like to welcome our witness today, the Honorable B. Todd Jones, who was confirmed and sworn in last summer as the Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives.

For seven years—since 2006—ATF did not have a Senate-confirmed Director. So I welcomed Director Jones' confirmation, and I know he has been extremely busy addressing many of the Bureau's problems and challenges that he inherited.

ATF plays a critical role in enforcing our nation's firearms laws and combating illegal firearms trafficking and other crimes. Its agents, investigators, and support staff work to protect the American people from gun violence that has ravaged communities across the country.

ATF personnel played key roles in responding to the Navy Yard shootings, the Boston Marathon bombings, the Sandy Hook tragedy, and the Aurora movie theater attack.

Given the inherent dangers associated with conducting operations that target violent criminal organizations, ATF must take on a certain degree of risk. Our hearing today should focus on ensuring that the Bureau properly manages this risk while protecting the safety of its personnel and especially the surrounding community.

Today, we will hear about one type of operation: the undercover storefront. ATF officials explain that the Bureau has utilized this investigative technique successfully over many years. By working deep inside communities that are being terrorized by violent gangs and drug cartels, ATF agents contend that they have been able to make a significant difference to the residents of these neighborhoods.

Over the last year, however, there have been numerous allegations involving storefront operations in several cities.

In January of 2013, the Milwaukee Journal Sentinel reported that an undercover storefront operation in Milwaukee purchased weapons at above-market prices, including weapons that were recently purchased at retail outlets. It also reported that three ATF-issued

firearms were stolen from the trunk of an agent's vehicle, including an automatic weapon that was never recovered. It also reported that some defendants were incorrectly identified and charged, and that the operation netted primarily low-level individuals on firearms and drug charges.

Last December, the Journal Sentinel highlighted additional allegations in five cities: Albuquerque, Atlanta, Pensacola, Portland, and Wichita. According to this report, some of these operations allegedly targeted individuals with mental disabilities, one operation was located near a school, and some others allowed felons to leave the premises with firearms they brought into the store.

I understand that, as soon as these press reports came out, then-Acting Director Jones ordered the Bureau's Office of Professional Responsibility and Security Operations to fully investigate these allegations. Last March, this Office issued a detailed report that found many deficiencies with these operations. According to the report, "these deficiencies caused a loss of property, created risks to public and officer safety, and led to the improper arrests of four individuals."

The report found that the "absence of comprehensive written guidelines and 'best practices' for the operation of an undercover storefront was a contributing factor in many of the deficiencies in Operation Fearless." It also found that "the primary cause for deficiencies not being identified and corrected was the failure of the case agent and the first-line supervisors to report those problems."

In response to these findings, Director Jones and ATF prepared a comprehensive manual incorporating lessons learned from the Milwaukee operation and best practices from many other successful storefronts. The Bureau also will require personal briefings between agents and ATF Headquarters, as well as on-site inspections of the storefronts.

I hope the Committee will hear more today about ATF's responses to these allegations, the reforms ATF has implemented, and additional measures ATF can take to enhance safety in high-risk operations.

One thing I hope we can avoid is the overheated rhetoric we have seen in numerous previous investigations conducted by this Committee.

ATF certainly has had its share of problems over the years. Our focus today should be on ensuring that the agency continues its path towards reform. I understand that the Department of Justice Inspector General is also investigating the Milwaukee operation, and I hope we can obtain the results of that review as well.

Finally, Mr. Chairman, I ask unanimous consent to place into the record a letter sent to the Committee yesterday from the Federal Law Enforcement Officers Association.

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Contact: Jennifer Hoffman, Communications Director (202) 226-5181



## FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

1100 Connecticut Avenue • Suite 900 • Washington, DC 20036

(202) 293-1550

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OIG

U.S. Park Police

JUSTICE

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Drug Enforcement Administration

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U.S. Marshals Service

OIG

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TREASURY

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April 1, 2014

The Honorable Darrell Issa

Chairman, House Oversight and Government Reform Committee

The Honorable Elijah E. Cummings

Ranking Member, House Oversight and Government Reform Committee

Dear Chairman Issa and Ranking Member Cummings:

In my capacity as the National President of the Federal Law Enforcement Officers Association (FLEOA), I am writing to you regarding the focus and intent of the ATF hearing scheduled for Wednesday, April 2, 2014. As you may know, FLEOA represents dedicated ATF Special Agents nationwide who are defined by their honor and their excellence in pursuing some of the most violent criminals in our country. I am concerned that this hearing may bypass that honor and excellence, and instead amount to an unwarranted attack on the character and leadership of ATF Director B. Todd Jones.

We all agree that ATF as a premiere law enforcement agency should perform on an optimum level of excellence that inspires public confidence in their ability to carry out their formidable mission. Of equal importance is the American public's confidence that your committee is holding hearings of critical importance, and are conducted in a fair and professional manner. I respectfully ask that the committee not endeavor to tear open the wounds of "Fast and Furious," but instead focus on what ATF is doing under Director Jones' leadership to move ahead and avoid the mistakes of the past. For instance, ATF's Frontline initiative is a powerful model that will empower the agency to focus effectively and direct its resources towards the highest priority cases.

It is my understanding that the Majority has questions for Director Jones regarding ATF's management of a storefront operation in Milwaukee. Deputy Director Tom Brandon did a thorough job answering questions on this topic while testifying before the House Judiciary Committee, and it is my hope that the committee will avoid retread questions and grandstanding.

Please do not misconstrue my remarks as an attempt to minimize the issues that surfaced during and after the storefront operation. To be clear, the issues are extremely important, but the agency should be recognized for their transparency in addressing these matters. There is no need to employ scissors at the Director's arms for there is nothing hidden up his sleeves.

It has been alleged that ATF targeted and exploited the mentally incapacitated to facilitate storefront connections to prospective criminals. That is beyond absurd, and no one in the field administers impromptu Jeopardy styled quizzes to assess the IQ of prospective criminal element. Prisons are occupied by

criminals with IQ's ranging from Moron to Genius, and anyone experienced in law enforcement will tell you that the former is the most difficult to use as a cooperator. Furthermore, criminal element don't provide their Meyers-Briggs assessments to law enforcement, and agents are left with making a variety of critical assessments of those they're dealing with in real time - including threat levels and safety issues. Nonetheless, neither ATF nor any federal law enforcement component is in the practice of exploiting mentally incapacitated individuals.

I expect that ATF Director Jones will present formidable statistics derivative of storefront operations across the country. Storefront operations come with a degree of risk and are always a challenge to manage, but then you don't place ads in the Help Wanted section of tabloids to catch gun traffickers and straw buyers. In assessing the effectiveness of storefront operations, please consider the potent outcomes and not just the operating costs.

It is also important to recognize ATF's consistent first responder excellence to high profile violent crimes. To wit, the DC Navy Yard incident, the Boston Marathon bombing, Sandy Hook tragedy, Aurora Movie theater attack, etc. In each of these violent incidents, ATF was on scene to both pursue the active shooter/terrorists, and establish the crime scene to make the area safe for obtaining evidence. Compared to other federal law enforcement components, ATF prosecutes cases that typically result in longer prison sentences, and involve defendants with prior arrest records or gang affiliation. I respectfully ask the committee to recognize the consistency of ATF's involvement and rapid response to high profile active shooter cases, and not simply convene the hearing as an Open Season on ATF event.

The other piece that your committee is apparently concerned with relates to three weapons stolen from the locked trunk of an agent's vehicle. This wasn't an issue of negligence; it was an example of a criminal possessing the capability to defeat a law enforcement authorized trunk lock. This is unfortunate, and obviously all law enforcement components are looking into better means to secure weapons in vehicles and all locations. However, this should not rise to a major level of concern for a congressional hearing, nor be paralleled to the legitimate issues addressed in the Fast and Furious matter.

The dedicated work of these law enforcement professionals should not culminate into a finger pointing attack on the Director. As far as I know, ATF has been extremely cooperative and transparent in these matters, and has not attempted to shirk responsibility for questionable outcomes that occurred in the field.

On behalf of our ATF membership and all federal law enforcement officers nationwide, I thank you for allowing me the time to express our position on these important issues.

Respectfully yours,

*J. Adler*

J. Adler  
National President

April 1, 2014

Honorable B. Todd Jones  
 Director, Bureau of Alcohol, Tobacco and Firearms  
 99 New York Avenue, N.E.  
 Washington, D.C. 20002

Dear Director Jones:

As you are probably aware, the family of slain U.S. Border Patrol Agent Brian Terry continues to be extremely frustrated with what we consider as the Department of Justice's failure to hold members of ATF's Phoenix Field Division and the U.S. Attorney's Office of Arizona fully accountable for their mistakes in the ill-conceived and flawed gun trafficking investigation known as Operation Fast and Furious. Although this investigation occurred before your tenure as Director, you do bear responsibility for its aftermath and how ATF ensures that the mistakes made in that operation are never repeated. No one has been watching your actions more closely than the Terry family. We are concerned that you have not followed through with appropriate disciplinary measures or other administrative actions for ATF employees as it relates to their roles in Operation Fast and Furious and outlined in the Inspector General's report.

It has been eighteen months since Department of Justice Inspector General Michael E. Horowitz made the following statement to the House Committee on Oversight and Government Reform on September 20, 2012:

*"Our review of Operation Fast and Furious and related matters revealed a series of misguided strategies, tactics, errors in judgment, and management failures that permeated ATF Headquarters and the Phoenix Field Division, as well as the U.S. Attorney's Office for the District of Arizona and at the Headquarters of the Department of Justice. In this report, we described deficiencies in two operations conducted in ATF's Phoenix Field Division between 2006 and 2010 – Operation Wide Receiver and Operation Fast and Furious. In the course of our review we identified individuals ranging from line agents and prosecutors in Phoenix and Tucson to senior ATF officials in Washington, D.C., who bore a share of responsibility for ATF's knowing failure in both these operations to interdict firearms illegally destined for Mexico, and for pursuing this risky strategy without adequately taking into account the significant danger to public safety that it created. We also found failures by Department officials related to these matters, including failing to respond accurately to a Congressional inquiry about them.*

*Based on our findings, we made six recommendations designed to increase the Department's involvement in and oversight of ATF operations, improve coordination among the Department's law enforcement components, and enhance the Department's wiretap application review and authorization process. The OIG intends to closely monitor the Department's progress in implementing these recommendations. Finally, we recommend that the Department review the conduct and performance of the Department personnel as described in this report and determine whether discipline or other administrative action with regard to each of them is appropriate."*

Moreover, Inspector General Michael E. Horowitz's comprehensive report on Operation Fast and Furious, A Review of ATF's Operation Fast and Furious and Related Matters identified several current Department of Justice and ATF employees who bore particular responsibility for the many mistakes made in Operation Fast and Furious. These employees included ATF agents Hope MacAllister, David Voth, George Gillett, William Newell and AUSA's Emory Hurley, and Michael Morrissey. We understand that these individuals have continued in their employment with the Department of Justice despite the findings of the Inspector General's report. Furthermore, it has come to our attention that ATF's Professional Review Board had previously recommended termination for at least some of these individuals. If this is true, the Terry family would like to understand why the recommendations were not followed.

Recently, the Terry family had an opportunity to meet and speak with Special Agent Michelle Terwilliger, the lead FBI special agent investigating the murder of Brian Terry. During our conversation, we learned that Terwilliger had never been informed by ATF agents that the weapons recovered from the scene of the murder had been traced to Operation Fast and Furious. Imagine our shock in learning that members of ATF Phoenix Field Division and the U.S. Attorney's Office in Arizona had chosen to keep this important piece of information not only from the Terry family but from the lead investigator in a federal agent's murder. Agent Terwilliger went on to say that she finally learned of this connection when the news media began to report it almost two months later. The Terry family has long suspected that members of the ATF Phoenix Field Division and the U.S. Attorney's Office of Arizona had worked to keep the connection between Operation Fast and Furious and its connection to the murder of Brian Terry from being known outside of the Division's Group VII and a few individuals within the U.S. Attorney's Office. This information seems to validate that suspicion.

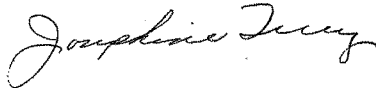
We know through the review of official emails that ATF agents in the Phoenix Field Division associated with Operation Fast and Furious and members of the U.S. Attorney's Office in Arizona knew on the same day Brian was killed that the two weapons found at the murder scene were in fact connected to the gun trafficking investigation by means of weapons trace data. Despite this knowledge, this critical information was never passed on to the lead FBI investigator. This failure to notify the FBI constitutes at the very least, another serious lapse of judgment not previously identified and may have impeded the homicide investigation. It should be noted that the Terry family has requested that Inspector General Michael E. Horowitz initiate a new

investigation to determine if criminal charges against those individuals involved in withholding this information from the FBI are appropriate.

It has been three years since my son was murdered by a group of individuals working as a rip-crew for the Sinaloa Drug Cartel and carrying weapons supplied to them through ATF's Operation Fast and Furious. The criminal case continues to move forward, but it appears that the accountability aspect of Operation Fast and Furious has failed to fully occur. While speaking about the DOJ employees involved in Operation Fast and Furious, President Obama once said, "Those folks who were responsible have been held accountable". It appears to the Terry family that this is not entirely the case. The Terry's are unaware of any ATF employee who has been held fully accountable and disciplined accordingly for the deadly mistakes made in the operation. This fact is extremely disheartening to the Terry family and continues to be a source of great consternation.

The Terry family asks that you review the conduct and performance of ATF personnel as it relates to Operation Fast and Furious as described in the Inspector General's report to determine whether ATF's subsequent disciplinary measures or other administrative actions assigned to each employee were appropriate. In addition, if ATF's Professional Review Board did in fact recommend certain disciplinary measures such as termination for certain employees then please explain why these terminations have not occurred. Finally, the Terry family is extremely alarmed to learn that important evidentiary information was kept from the FBI's lead investigator by members of ATF's Phoenix Field Division's Group VII and the U.S. Attorney's Office for the District of Arizona during the initial investigative phase of Agent Brian Terry's murder. As you know, the failure of these individuals to report immediately to the FBI that the weapons found at the murder scene were in fact linked to Operation Fast and Furious demonstrates another major error in judgment by all those involved and is completely unacceptable by anyone employed as a federal law enforcement officer or government attorney. The Terry family looks forward to hearing back from you regarding our concerns.

Sincerely,

A handwritten signature in cursive script, appearing to read "Josephine Terry".

Josephine Terry

Proud Mother of slain U. S. Border Patrol Agent Brian Terry





December 12, 2013

The Honorable Eric Holder  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Mr. Attorney General:

The Arc of the United States has worked extensively over the years with many staff and officials in the U.S. Department of Justice to ensure that the rights of people with intellectual and developmental disabilities (I/DD) are protected throughout mainstream community life and within the criminal justice system. We have known very competent, inspiring, and visionary DOJ employees working over many decades to ensure full participation for people who face significant barriers in everyday life. We have seen remarkable progress in implementation of the Americans with Disabilities Act and the U.S. Supreme Court's *Olmstead* decision, particularly in recent years. We are now looking forward as we begin an exciting new chapter with DOJ start-up funding of a new National Center on Criminal Justice and Disability.

With DOJ's commitment to the protection of rights of people with disabilities, we were appalled to read news reports of the Bureau of Alcohol, Tobacco, and Firearms (ATF) agents engaging in entrapment and exploitation designed to prey on the intellectual disability of individuals whom ATF agents sought to engage in their stings, some of whom have been prosecuted for their participation. The targeting and use of people in this way, exploiting their disabilities, flies in the face of the excellent work of the Civil Rights division in pursuing full implementation of the Americans with Disabilities Act and the *Olmstead* decision. This reported behavior, if true, by a federal department charged with protecting the rights of people with disabilities must not be allowed to continue.

While this information is appalling, unfortunately, it is not surprising to The Arc. This type of injustice against people with I/DD occurs more often than the general public realizes. Individuals with I/DD are over represented in the criminal justice system and often used by other criminals without I/DD to carry out criminal activity. They typically have limited, if any, understanding about their involvement in a crime or consequences of being involved in a crime. With few options for or opportunities to build safe relationships, their strong need to be accepted by peers in their own communities can create a unique vulnerability that people without I/DD do not experience.

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The Arc  
1825 K Street NW, Suite 1200  
Washington, DC 20006

T 202 534-3700  
F 202 534-3731  
www.thearc.org

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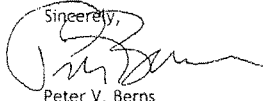
Pro-Rona Counsel  
Stacy Taylor  
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Chief Executive Officer  
Peter V. Berns

If the media stories about the ATF are based in truth at all, we believe that the harm done to individuals by agencies of their government is so egregious that the following actions are needed immediately:

- Establish an immediate investigation into the ATF practices which led to the news reports;
- Ensure an immediate halt to all practices which exploit people based on their intellectual and/or developmental disability;
- Require ATF to suspend any ongoing investigations that are targeting people known to have I/DD;
- Develop and implement a training program for ATF agents nationwide that provides specific information on how to identify persons with I/DD, and establish protocols to ensure they are no longer targeted or sought out as informants due to having a disability;
- Encourage the Inspector General to escalate the investigation to cover ATF more broadly and bring the investigation to conclusion sooner rather than later; and
- Petition the courts for equitable redress where people with intellectual disabilities are serving time for crimes initiated or furthered by the actions of ATF agents.

Without a firm repudiation of the reported behaviors by ATF agents, the public and the disability community, in particular, will lose faith in a department which it trusts to protect its rights, not to entice vulnerable people into legal trouble. The Arc is committed to working closely with the appropriate federal agencies to inform protocol and training development for ATF agents, and be of assistance on this important matter as needed. The goal of The Arc's National Center on Criminal Justice and Disability is to bridge the gap between the disability and law enforcement communities, creating access to justice and safer lives for people with I/DD. We stand ready to assist you in addressing these issues.

Sincerely,  
  
 Peter V. Berns  
 Chief Executive Officer, The Arc

cc: Cecilia Munoz, Assistant to the President and Director of the Domestic Policy Council



*Achieve with us.*

## Introduction to Intellectual Disabilities



### What Is an Intellectual Disability?

Intellectual disability is a disability that occurs before age 18. People with this disability experience significant limitations in two main areas: 1) intellectual functioning and 2) adaptive behavior. These limitations are expressed in the person's conceptual, social and practical everyday living skills. A number of people with intellectual disability are mildly affected, making the disability difficult to recognize without visual cues. Intellectual disability is diagnosed through the use of standardized tests of intelligence and adaptive behavior. Individuals with intellectual disabilities who are provided appropriate personalized supports over a sustained period generally have improved life outcomes (AAIDD, 2011). In fact, many adults with intellectual disabilities can live independent, productive lives in the community with support from family, friends and agencies like The Arc.

### How Many People Have Intellectual Disabilities?

An estimated 4.6 million Americans have an intellectual or developmental disability (Larson, 2000). Prevalence studies may not identify all people with intellectual disabilities. Many school age children receive a diagnosis of learning disability, developmental delay, behavior disorder, or autism instead of intellectual disability.

### What Is Intelligence?

Intelligence refers to a general mental capability. It involves the ability to reason, plan, solve problems, think abstractly, comprehend complex ideas, learn quickly, and learn from experience. Intelligence is represented by Intelligent Quotient (IQ) scores obtained from standardized tests given by trained professionals. Intellectual disability is generally thought to be present if an individual has an IQ test score of approximately 70 or below.

The Arc  
1825 K Street NW  
Suite 1200  
Washington, D. C. 20006  
Phone: 202.534.3700  
Toll free: 800.433.5255  
Fax: 202.534.3731  
[www.thearc.org](http://www.thearc.org)

### What Is Adaptive Behavior?

Adaptive behavior is the collection of conceptual, social and practical skills that have been learned by people in order to function in their everyday lives. Significant limitations in adaptive behavior impact a person's daily life and affect his or her ability to respond to a particular situation or to the environment. Standardized testing aims to measure the following skills:

- Conceptual skills: receptive and expressive language, reading and writing, money concepts, self-direction.
  - Social skills: interpersonal, responsibility, self-esteem, follows rules, obeys laws, is not gullible, avoids victimization.
  - Practical skills: personal activities of daily living such as eating, dressing, mobility and toileting; instrumental activities of daily living such as preparing meals taking medication, using the telephone, managing money, using transportation and doing housekeeping activities; occupational skills; maintaining a safe environment.
- A significant deficit in one area impacts individual functioning enough to constitute a general deficit in adaptive behavior (AAIDD, 2011).

### How Does Having

### a Disability Affect Someone's Life?

The effects of intellectual disabilities vary considerably among people who have them, just as the range of abilities varies considerably among all people. Children may take longer to learn to speak, walk and take care of their personal needs, such as dressing or eating. It may take students with intellectual disabilities longer to learn in school. As adults, some will be able to lead independent lives in the community without paid supports, while others will need significant support throughout their lives. In fact, a small percentage of those with intellectual disabilities will have serious, lifelong limitations in functioning. However, with early intervention, appropriate education and supports as an adult, every person with an intellectual disability can lead a satisfying, meaningful life in the community.

### How Can Supports Help?

Supports include the resources and individual strategies necessary to promote the development, education, interests, and well-being of a person. Supports enhance individual functioning. Supports can come from family, friends and community or from a service system. Job coaching is one ex-

ample of a support often needed by a new employee with intellectual disabilities. Supports can be provided in many settings, and a "setting" or location by itself is not a support.

### What Is the Definition of Developmental Disabilities (DD)?

According to the Developmental Disabilities Act (Pub. L. 106-402), the term developmental disability means a severe, chronic disability that:

1. is attributable to a mental or physical impairment or a combination of those impairments;
2. occurs before the individual reaches age 22;
3. is likely to continue indefinitely;
4. results in substantial functional limitations in three or more of the following areas of major life activity: (i) self care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and
5. reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

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U.S. Department of Justice  
Bureau of Alcohol, Tobacco, Firearms and Explosives  
*Office of Professional Responsibility and Security Operations*

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**Report on Operation Fearless  
(778040-11-0094)  
and Related Matters**



March 21, 2013

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Law Enforcement Sensitive

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...[REDACTED] was identified as [REDACTED].

[...] PO [REDACTED] also was able to [REDACTED] that [REDACTED] to a [REDACTED]. PO [REDACTED] was able to link to a subject named [REDACTED]. PO [REDACTED] then linked [REDACTED] to [REDACTED].

[...] PO [REDACTED] a color computer photo of [REDACTED] and showed it to SA [REDACTED]. SA [REDACTED] positively identified [REDACTED] as the subject he purchased cocaine from on 03-15-12.<sup>55</sup>

As discussed below, it would later be determined that this identification was incorrect.

On March 15, 2012, SAC Zapor provided a Monitored Case Program briefing on Operation Fearless. SAC Zapor would normally have delivered that report to the DAD (Central), but with that position vacant, the briefing was delivered to Zebedec Graham, DAD, Field Operations – (East) and Field Management Staff. The monitored case review tracking notes indicate that SAC Zapor reported that, as of that date, four defendants had been identified.<sup>56</sup>

By e-mail message transmitted March 23, 2012, DTA [REDACTED] notified Acting ASAC [REDACTED], Acting RAC [REDACTED], and SA [REDACTED] that SAC Zapor had approved using weekly ATF Operational Plans for operation of the undercover storefront.<sup>57</sup> Previously, ATF Operational Plans had been prepared on a daily basis.

On or about the third week of March of 2012, the FBI withdrew from participation in Operation Fearless.<sup>58</sup> The FBI withdrew from participation primarily because the assigned FBI participant, FBI SA [REDACTED], and an FBI ASAC, [REDACTED], did not have confidence in the operational planning and tactical support for the undercover storefront operation and in particular harbored concerns about the adequacy of [REDACTED]. FBI SA [REDACTED] and FBI ASAC [REDACTED] furthermore perceived ATF as being dismissive of concerns

<sup>55</sup> N-Force case [REDACTED], Operation Fearless, ROI 386.

<sup>56</sup> Monitored Case Review Tracking log (Field Management Staff – March 15, 2012 line entry).

<sup>57</sup> E-mail message from DTA [REDACTED] to Acting ASAC [REDACTED] re: Storefront Op. plans (March 23, 2012).

<sup>58</sup> Notwithstanding that the FBI withdrew from Operation Fearless, some later ATF records would reflect, incorrectly, that the FBI remained a participant. E.g., ATF Operational Plan (ATF Form 3210.7) for case number [REDACTED] (storefront) for period 7/10/12-7/13/12.

expressed by them. In making the decision to withdraw from participation, FBI ASAC [REDACTED] also was concerned that an experienced ATF ASAC [REDACTED] had been reassigned out of the Milwaukee office and that an acting ASAC [REDACTED] and acting RAC [REDACTED] would be supervising the operation. The FBI and ATF also differed over an intelligence issue; the FBI wanted to post real-time intelligence bulletins and National Integrated Ballistic Information Network (NIBIN) checks, while ATF wanted to delay the NIBIN checks and intelligence bulletins until the completion of the operation to reduce the risk of compromising the storefront operation cover.<sup>59</sup>

By Memorandum dated March 28, 2012, SAC Zapor requested authority to exceed \$50,000 in expenditures for Operation Fearless.<sup>60</sup> This Memorandum appears to have been drafted by SA [REDACTED] for SAC Zapor's signature.<sup>61</sup> The section of that Memorandum titled "Background and Scope of Investigation" stated:

*The U.S. Attorney's Office and the Milwaukee Police department (MPD) contacted ATF's Milwaukee Group III and requested investigative support in targeting violent crime and gang crimes on the south side of Milwaukee, specifically MPD District 2. Numerous street and motorcycle gangs are operating in this area, to include the [REDACTED]*

*[REDACTED] Currently the [REDACTED] street gang is attempting to take over the territory controlled by the [REDACTED], resulting in an increase in home invasion robberies and assaults. Various investigations and incidents have indicated that the [REDACTED] street gang has close ties to the [REDACTED] to include narcotics and firearms trafficking.*

*The United States Attorney's Office supports a "Sting/Storefront" operation using undercover operations that serve to attract criminals who are predisposed to violate Federal statutes within ATF's purview. The objective of this operation would be to identify gang members in the community who are involved in the illegal possession and sale of firearms, and to gather enough evidence against them to obtain a successful prosecution in Federal court. This goal would be*

<sup>59</sup> FBI ASAC [REDACTED] interview.

<sup>60</sup> Memorandum re: Request to Exceed \$50,000, Fiscal Year 2012, Investigation # [REDACTED] (Operation Fearless) (March 28, 2012).

<sup>61</sup> Memorandum re: Request to Exceed \$50,000, Fiscal Year 2012, Investigation # [REDACTED] (Operation Fearless) (March 28, 2012) at 1 (initials "[REDACTED]" in upper right corner of page).

EXECUTIVE SUMMARY

Operation Fearless is an ongoing investigation to target gang members involved in the illegal possession and sale of firearms and to gather enough evidence against them to obtain successful prosecution in Federal court. In furtherance of this investigation, the case agent operated an undercover storefront, "Fearless Distributing," to stage undercover purchases of firearms and other contraband from these targets. The storefront operated from approximately February 8, 2012, to September 22, 2012. The investigation at this time is focused on criminal prosecutions; to date approximately fifteen Operation Fearless subjects have been indicted in Federal court on firearms and narcotics charges, while fourteen have been charged in state court on narcotics charges (exclusive of cases dismissed by the prosecutor).

Operation Fearless became the subject of critical press coverage following two incidents related to the operation of the undercover storefront. First, on September 13, 2012, the criminals broke into, and stole property from, the ATF-assigned vehicle of the primary undercover agent. This special agent was a part-time member of the Special Response Team (SRT), and the equipment stolen from his vehicle included three firearms, one of which was a machinegun. Second, after the storefront ceased business operations, criminals burglarized the business premises, stealing tens of thousands of dollars of prop merchandise.

The Office of Professional Responsibility and Security Operations (OPRSO) undertook a management review of Operation Fearless. Based on that review, OPRSO found that the planning and management of Operation Fearless was deficient in several key areas:

- Written guidance for operating an undercover storefront was insufficient;
- Insufficient human resources were committed to the operation and support of the undercover storefront;
- Reports of investigation were entered into N-Force late;
- Evidence was entered into the evidence vault late;
- Agent cashier funds were incorrectly reported as having been expended;
- Operational planning to reduce the risk of a "blue-on-blue" occurrence was insufficient;
- Planning for interdicting and arresting targets away from the storefront was insufficient, and the failure to interdict one target who presented a danger to public safety reflected poor judgment;

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- A practice of purchasing every firearm presented for sale, regardless of expense, was a deficient and risky practice and reflected a misunderstanding of Bureau policy regarding firearms transfers;
- During the operation of the storefront, a narcotics prop was used without proper authorization;
- Four individuals were incorrectly identified as targets and arrested;
- Deficient operational security measures were a contributing factor in the loss of valuable and sensitive property and put officer safety at risk;
- Deficient management of the lease of the business premises compounded the operational security problems and led to the legal disputes with the landlord of the premises;
- Conversations between ATF managers and the landlord of the premises were improperly recorded without the landlord's knowledge;
- When the landlord failed to pay the electric bill for the premises, account statements were improperly taken and information contained in one of those statements was improperly used to impersonate the landlord in a telephone conversation with the electric power provider;
- Three firearms were stolen from an ATF-assigned vehicle; and
- The Monitored Case Program failed to detect and correct deficiencies in the planning and management of the case.

#### INTRODUCTION

Following Congressional inquiries and press reports regarding the operation of Fearless Distributing, an undercover storefront in Milwaukee, the Office of the Director directed OPRSO to undertake a management review of that operation and report findings and conclusions within approximately thirty days. OPRSO assembled a team of employees from the Inspection Division and the Internal Affairs Division, which completed an initial review of the records of that operation and interviewed persons (ATF employees and others) who were involved in the planning, management, and execution of the operation. This report summarizes this Office's initial findings regarding the events surrounding the operation of the Fearless Distributing undercover storefront and sets out findings and recommendations regarding identified deficiencies in the planning and management of that operation. This Office is continuing to review this matter and may make supplemental recommendations.

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## U.S. Department of Justice

Bureau of Alcohol, Tobacco,  
Firearms and Explosives*Assistant Director*Washington, DC 20536  
www.atf.gov

APR 1 2014

The Honorable Darrell E. Issa  
Chairman  
Committee on Oversight and Government Reform  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

This responds to your letters of March 28, 2014, and January 15, 2013, which request information about disciplinary actions taken by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in connection Operation Fast and Furious. We also want to respond to the subpoena that you served on ATF, on March 27, 2014, to compel ATF Director B. Todd Jones to testify at the Committee's hearing on April 2, 2014. As you know, Director Jones had already agreed to testify, but we understand from discussions with Committee staff that you believed a subpoena would free Director Jones of restrictions the Privacy Act may place on disclosures of information about disciplinary actions regarding ATF employees.

Although we appreciate your consideration of the Privacy Act, the Committee's subpoena does not override our legal obligation to protect the confidentiality of information protected by that statute and any other federal laws. We are concerned that disclosure of Privacy Act protected information in a public forum, such as an open congressional hearing, could violate the Act. However, as you know, the Privacy Act's provision set forth at 5 U.S.C. 552a(b)(9) permits our non-public disclosure of such information in response to your request as Chairman of the Committee on Oversight and Government Reform. This provision allowed ATF, consistent with longstanding Department of Justice practice and policy spanning administrations of both parties, to provide a non-public, confidential briefing to staff from your Committee and the Senate Judiciary Committee regarding personnel matters relating to former Deputy Assistant Director William McMahon in October 2012. It also allows us to respond to your letters referenced above by providing the enclosed confidential, non-public summary regarding the status of former or current ATF employees identified in the "Individual Performance" Section in Chapter 7 of the Office of the Inspector General's (OIG) September 2012 report on Operation Fast and Furious.

The Honorable Darrell E. Issa  
Page Two

The enclosed confidential summary reflects the ATF's decisions and the conclusions of the personnel process in matters involving employees in Operation Fast and Furious. We hope that you understand, in light of the Privacy Act's prohibitions on public disclosure, Director Jones will not be in a position to discuss these matters in the public hearing on April 2, 2014. To facilitate the Committee's understanding of the summary, we want to provide additional information about the process that led to those decisions.

ATF's Internal Affairs Division (IAD) reviews all allegations involving ATF personnel (other than attorney misconduct matters) to determine if an investigation is warranted. In certain circumstances, such as those present in the Fast and Furious matter, the Department of Justice's Office of Inspector General (DOJ OIG) conducts original investigations of allegations involving Bureau employees. In these cases, the IAD does not conduct an independent investigation of the allegations, but may, as it did in the Fast and Furious matter, review an OIG report and determine whether the OIG's findings should be referred to management for action, or whether the findings raised issues that warranted further review by ATF's Professional Review Board (PRB). After review of the OIG Fast and Furious report, IAD determined that the OIG Report's findings with respect to certain employees should be reviewed by the PRB.

ATF's PRB is a board designed to ensure that allegations regarding employee integrity and performance issues are handled lawfully, fairly, consistently and expeditiously. The PRB consists of a chair and five members, all with senior management experience. The PRB meets regularly to consider the merits of each case, to determine if the conduct involved warrants a proposal to the Bureau's Deciding Official (or alternate) for discipline or adverse action.<sup>1</sup> PRB proceedings are ex parte; the employee does not have an opportunity to present to the PRB evidence or mitigating factors.

If the PRB elects to send a proposal for discipline or adverse action to the BDO, then the subject employee is entitled to respond to the proposal in accordance with the federal civil service law, DOJ policies and ATF orders. ATF provides employees the opportunity to respond to a PRB proposal both orally and in writing as a matter of right. Moreover, the employee may be represented by counsel or other representative when responding to a PRB proposal. The BDO has plenary authority to review a PRB proposal and underlying investigative reports for sufficiency, and may rely on rebuttal argument or mitigating factors submitted by the employee.

When the PRB issues a proposal involving a member of the Senior Executive Service (SES), ATF's Deputy Director serves as the deciding official in lieu of the BDO. If the proposal involving the SES employee also involves employees who are not SES, the Deputy Director is also the deciding official for the non-SES employee proposals. Since the OIG report regarding Fast and Furious included findings on ATF SES employees, ATF Deputy Director Thomas Brandon served as the deciding official on all PRB proposals relating those individuals.

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<sup>1</sup> If the PRB determines the matter does not warrant a proposal for BDO review, it may refer the matter to the employee's supervisor for management action.

The Honorable Darrell E. Issa  
Page Three

We hope that this information is helpful, and that you will advise us if the Committee has questions about these matters.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a final horizontal stroke.

James H. Burch, II  
Assistant Director

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member, House Committee on  
Oversight and Government Reform

Confidential Personnel Summary  
Submitted Pursuant to 5 U.S.C. 552a(b)(9)

CONFIDENTIAL SUMMARY OF ATF PERSONNEL MATTERS  
PROVIDED TO  
THE HOUSE OVERSIGHT AND GOVERNMENT REFORM COMMITTEE  
PURSUANT TO THE PRIVACY ACT, 5 U.S.C. 552a(b)(9)  
APRIL 1, 2014

*NOTE: Due to the substantial personal privacy interests of the individuals identified herein, we respectfully request that the Committee not publically release their names. Moreover, due to specific safety concerns, we further request that the Committee not publically release the duty station of current ATF employees.*

- Former Acting Director Kenneth Melson: On August 30, 2011, Mr. Melson was reassigned from that position and began work the following day as a Senior Advisor in the Department of Justice Office of Legal Policy. On September 19, 2012, Mr. Melson retired.
- Former Deputy Director William Hoover: On January 5, 2012, Mr. Hoover was transferred to the position of Executive Assistant to the Director. The formal change in title for this action took effect on April 30, 2012, but the change in his duties occurred as of January 6, 2012. On July 31, 2012, Mr. Hoover retired.
- Former Assistant Director Mark Chait: On January 5, 2012, Mr. Chait was transferred to the position of Executive Assistant to the Director. The formal change in title for this action took effect on April 30, 2012, but the change in his duties occurred as of January 6, 2012. On November 30, 2012, ATF's Professional Review Board ("PRB") proposed as discipline removal from service for reasons related to the findings in the OIG report. On December 6, 2013, prior to being served with the PRB proposal, Mr. Chait retired. ATF had no legal authority to prevent Mr. Chait from retiring prior to finalization of the disciplinary process.
- Former Deputy Assistant Director William McMahon: On July 31, 2011, Mr. McMahon was transferred to the position of Deputy Assistant Director of the Office of Professional Responsibility and Security Operations. On September 12, 2012, he was transferred to the position of Executive Assistant to the Director. On November 27, 2012, he was removed from service for reasons unrelated to the findings in the OIG report.
- Former Special Agent in Charge William Newell: In response to your question, Mr. Newell has not filed any formal complaints against ATF in the past four years. On November 6, 2011, he was transferred to the position of Special Assistant to the Assistant Director, Office of Management. On November 30, 2012, ATF's PRB proposed as discipline his removal from service for reasons related to the findings in the OIG report and also based on findings in an unrelated ATF Internal Affairs Investigation. On May

*Confidential Personnel Summary*  
*Submitted Pursuant to 5 U.S.C. 552a(b)(9)*

22, 2013, pursuant to a settlement agreement resolving the PRB recommendation of discipline, he was demoted from the Senior Executive Service to the position of GS-13 non-supervisory field Intelligence Officer. He was reassigned to the [REDACTED] Field Division, effective August 2013, and remains in that position.

- Former Assistant Special Agent in Charge George Gillett: On September 25, 2011, Mr. Gillett was transferred to ATF headquarters to the position of Law Enforcement Liaison to the United States Marshals Service. On November 30, 2012, ATF's PRB proposed as discipline his removal from service for reasons related to the findings in the OIG report and also based upon findings in an unrelated ATF Internal Affairs Investigation. After being served with the PRB proposal, Mr. Gillett elected to retire prior to the deadline for responding to that proposal. Mr. Gillett's retirement became effective on December 29, 2012. ATF had no legal authority to prevent Mr. Gillett from retiring prior to finalization of the disciplinary process.
- Former Group Supervisor David Voth: On December 18, 2011, Mr. Voth was transferred to the Alcohol, Tobacco Diversion Branch in ATF headquarters; on March 11, 2012, he was reassigned to the Asset Forfeiture and Seized Property Division in ATF headquarters. On November 30, 2012, ATF's PRB proposed as discipline demotion to a non-supervisory special agent position (GS-13) for reasons related to the findings in the OIG report. Pursuant to a settlement agreement resolving the PRB recommendation of discipline, he was demoted to a non-supervisory GS-13, effective June 16, 2013. He was re-assigned to the position of non-supervisory field Intelligence Officer, in the [REDACTED] Field Division, and remains in that position.
- Special Agent Hope MacAllister: Ms. MacAllister is currently a Special Agent in the [REDACTED] Field Division. On November 30, 2012, ATF's PRB proposed as discipline a 14-day suspension for reasons related to the findings in the OIG report. After consideration of her response to the PRB proposal, the Deciding Official, Deputy Director Thomas Brandon, mitigated the proposal to a letter of reprimand. Ms. MacAllister received the letter of reprimand on June, 14, 2013. Ms. MacAllister elected to file a grievance challenging the discipline imposed by the Deciding Official. This grievance was filed with (then Acting) Director Jones. On July 25, 2013, (then Acting) Director Jones denied her grievance, thus concluding the matter.



**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

November 25, 2014

The Honorable Darrell E. Issa  
Chairman  
Committee on Oversight and Government Reform  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

Enclosed please find responses to questions for the record arising from the appearance of B. Todd Jones, Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives before the Committee on April 2, 2014, at a hearing entitled "Undercover Storefront Operations: Continued Oversight of ATF's Reckless Investigative Techniques." We hope that this information is of assistance to the Committee.

The Office of Management and Budget has advised us that there is no objection to submission of this letter from the perspective of the Administration's program. Please do not hesitate to contact this office if we may be of additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in cursive script, reading "Peter J. Kadzik for".

Peter J. Kadzik  
Assistant Attorney General

Enclosure

cc: The Honorable Elijah Cummings  
Ranking Member

**Questions for the Record  
Director B. Todd Jones  
Bureau of Alcohol, Tobacco, Firearms, and Explosives  
Committee on Oversight and Government Reform  
United States House of Representatives  
Hearing on Undercover Storefront Operations: Continued Oversight of ATF's Reckless  
Investigative Techniques  
April 2, 2014**

**Questions Posed by Representative Walberg**

**Questions Related to Operation Kraken in Portland, Oregon:**

1. **The ATF's mission is to protect communities by investigating illegal uses of firearms, explosives, acts of arson and bombings, and illegal trafficking of alcohol and tobacco products. At the close of Operation Kraken, why did ATF participate in the human trafficking sting instead of turning over the information to federal and state agencies with the proper jurisdiction?**

**Response:**

Operation Kraken was conducted as a multi-agency investigation supported by the Portland Metro Gang Task Force (MGTF). The MGTF is comprised of participants from several local, state, and federal law enforcement agencies, including the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). ATF's role in the investigation of the prostitution and human sex trafficking crimes identified during the course of Operation Kraken was specifically agreed to by all participants as the most effective course of action to ensure public safety, follow protocols commonly used by the MGTF for multi-agency investigations, and conform with existing ATF policies for the handling of matters outside its primary jurisdiction.

ATF served as the lead agency for Operation Kraken, which focused on federal firearms offenses, as is common in criminal investigations involving firearms. Additionally, the subjects of the investigation also engaged in other criminal activity including property crime, drug trafficking, and in one instance, prostitution and human sex trafficking. Hence, throughout the investigation ATF worked closely with its local, state, and federal law enforcement partners with primary jurisdiction over non-firearm offenses. In fact, one of the ATF Task Force Officers assigned to Operation Kraken was a Deputy Sheriff with extensive experience in the investigation of human sex trafficking offenses.

ATF first learned that a subject of the investigation may have been involved in sex trafficking crimes when that subject told ATF undercover agents that he used force and coercion to manage his prostitutes. Consistent with internal ATF policy, upon learning this information, ATF immediately advised its state and federal counterparts with primary jurisdiction over the potential offenses involving human sex trafficking and sought guidance from the United States Attorney's



Office. After consultation with the U.S. Attorney's Office, all involved agencies agreed that pursuing an investigation of the subject's claimed involvement in sex trafficking was a public safety imperative, and that Homeland Security Investigations (HSI), within U.S. Immigration and Customs Enforcement, which is the agency with primary federal jurisdiction over human sex trafficking, along with an MGTf member, should serve as the lead agency for that aspect of the investigation. All agencies also agreed that ATF should remain involved with the human sex trafficking aspect of the investigation given the familiarity of the ATF undercover agents with the suspect, and the expertise of the ATF Task Force Officer in human sex trafficking investigations.

The investigative techniques used in the human sex trafficking investigation, including the undercover operation, were primarily formulated by those with direct jurisdiction over the offenses, specifically HSI and state investigators with expertise in human sex trafficking cases. ATF's participation in the human sex trafficking undercover operation was consistent with common practice in multi-agency investigations, was appropriate under the circumstances, and was fully consistent with its public safety mission as a federal law enforcement agency. The evidence developed from that undercover operation served as the basis for a federal indictment of defendant on charges of Transportation for Illegal Sexual Activity in violation of 18 U.S.C. § 2421. The defendant entered a guilty plea to that charge, in the U.S. District Court for the District of Oregon, and he was sentenced to 18 months imprisonment (to run concurrent with his conviction on the firearms offense arising from the ATF storefront investigation).

2. **ATF agents said the prostitution sting was necessary to arrest the target. Yet, the target had brought a sawed-off shotgun to the storefront days before. Why did ATF agents believe the prostitution sting necessary to arrest the target, when they already knew he would be indicted for the sawed-off shotgun?**

**Response:**

As detailed in response to Question 1, above, the decision to pursue the investigation of the human sex trafficking crimes was jointly made with the U.S. Attorney's Office and the agencies with primary jurisdiction over those offenses. Whether probable cause existed to arrest the defendant on firearm charges was not a determinative factor in the decisional process. ATF and HSI believe that several additional factors were taken into consideration in this process, including the public safety imperative to confirm the identity and ensure the safety of the women the defendant was trafficking, identify any other potential participants who might have been assisting the defendant in the victimization or abuse of the women, and ensure that prosecutors had sufficient evidence to hold the defendant accountable for these crimes.

3. **Does ATF have any policies in place regarding human trafficking? Upon learning of this ATF investigative technique, have you put a moratorium on this type of conduct during ATF investigations?**

**Response:**

Given the breadth of criminal conduct that ATF may encounter while investigating offenses within its core jurisdiction (firearm, explosive, arson, and contraband alcohol/cigarette trafficking), it is not feasible for ATF to develop specific policies for each sub-category of crime -- such as human or sex trafficking -- that may be encountered in an investigation. Instead, ATF policy specifically addresses situations where, during the course of an investigation, ATF special agents encounter criminal conduct that extends beyond ATF's core jurisdiction. In those instances, ATF policy provides that ATF agents shall refer all available information regarding the conduct falling outside ATF's core jurisdiction to the agency or agencies with direct jurisdiction over the offense, and offer cooperation and assistance to those agencies in the investigation of that conduct. As detailed in response to Question 1, above, ATF policy was followed in Operation Kraken with respect to the investigation of the human trafficking and prostitution offenses involving the defendants.

**Question Related to Cost of Storefront Operations:**

4. **Understanding that the number of storefront operations varies per year and costs will vary per location - How much would you estimate the ATF has spent on storefront operations over the last 4 years?**

**Response:**

Since the beginning of Fiscal Year 2009 (October 1, 2008), ATF has initiated undercover storefronts in 37 investigations. As of May 15, 2014, these operations had resulted in 1,816 arrests, 1,456 convictions, and the purchase or recovery of 4,436 crime guns. Operational expenses (purchase of evidence and information, travel for undercover personnel, rent and utilities for the undercover location, etc.) associated with those 37 investigations averaged under \$172,000 per investigation.

**Questions Related to Sporting Purpose Exemption for Ammunition:**

5. **Under current law, ammunition that is made from certain metals, including brass, is defined as "armor piercing ammunition" if there is a handgun on the market chambered in the same caliber that could fire that ammunition. However, the law and ATF's regulations provide that if the ammunition was designed and intended primarily for a sporting purpose, like hunting, ATF can, upon petition, grant a sporting purpose exemption for that ammunition, is that correct?**

**Response:**

Ammunition that may be classified as *armor piercing ammunition* includes projectiles or projectile cores, which may be used in a handgun and are constructed from one, or a combination of certain metals, including brass. Pursuant to Title 18 U.S.C. § 921(a)(17)(C), the Attorney General (delegated to ATF) may grant a sporting purposes exemption to ammunition classified as *armor piercing ammunition*. Federal regulations at 27 CFR § 478.148 – Commerce in Firearms and Ammunition, provide additional information. However, unlike other sporting purposes tests in the Gun Control Act of 1968, this section does not reference the “design” of such ammunition, stating only that an exemption may be granted if the Attorney General finds that the ammunition is “primarily intended to be used for sporting purposes.”

- 6. How many petitions for a sporting purpose exemption to the armor piercing ammunition regulations have been submitted to ATF in the past 3 years?**

**Response:**

From Fiscal Years 2011 – 2013, ATF received 32 petitions for a sporting purpose exemption to the statutory definition of “armor piercing ammunition.”

- 7. How many petitions seeking a sporting purpose exemption has ATF ruled on in that same time frame?**

**Response:**

ATF has not granted or denied any exemptions on projectiles that meet the statutory definition of “armor piercing ammunition” in that same time frame.

- 8. What do you believe is a reasonable time period for ATF to rule on these straight forward petitions?**

**Response:**

The primary purpose of the statutory restriction on armor-piercing ammunition is the protection of law enforcement officers. The increased availability of handguns capable of chambering ammunition originally intended for use in rifles is an area of great concern to law enforcement. The exemption requests, while aimed at meeting market demand for broader availability of lead-alternative ammunition for use by sportsmen, directly implicate this law enforcement concern. ATF is responsible for ensuring that the sporting purposes exemption is applied in a manner that does not in effect eliminate the statutory restrictions intended to protect law enforcement officers. ATF is carefully evaluating each exemption request to ensure that resolution adequately reflects the statute’s fundamental officer safety goal.

9. **Given that states like California have banned the use of traditional ammunition made from lead components for hunting in the state, don't you think that hunters should have the opportunity to purchase rifle ammunition for hunting made from alternative metals like brass? Isn't it true that the Association of Fish & Wildlife Agencies (AFWA) and numerous conservation groups representing millions and millions of hunters and sportsmen have written in the past to urge ATF to rule on these long pending petitions?**

**Response:**

Under current law in California, the use of lead ammunition is only prohibited in specific, limited environmentally sensitive areas. Additional restrictions on the use of lead ammunition in California have not yet become effective. Alternative ammunition with copper projectiles is currently available to hunters in all states, including California. These projectiles do not fall within the statutory definition of "armor-piercing ammunition" and may be used by hunters in the areas where lead projectiles are prohibited.

The Attorney General received a letter co-signed by 24 organizations representing hunters and sportsmen in November 2013 urging the Department to promptly adopt policies allowing ATF to set objective, common-sense criteria for the application of the statute's "sporting purpose" exemption to pending applications.

10. **Considering that lead ammunition is not allowed in California and given the fact that ATF has refused to rule on these waivers, haven't you denied people the opportunity to hunt for big game like white tailed deer, elk, bighorn sheep and bear in that state?**

**Response:**

Please see the response to Question 9, above.

11. **By what date will ATF commit to this committee it will rule on these long pending petitions?**

**Response:**

As detailed in response to Question 4, above, the primary purpose of the statutory restriction on armor-piercing ammunition is the protection of law enforcement officers. ATF is carefully evaluating each exemption request to ensure that resolution adequately reflects the statute's fundamental officer safety goal. As each petition must be evaluated with this goal in mind, ATF cannot at this time provide a date on which it will resolve all pending petitions.

Questions Posed by Representative Farenthold

Mr. Jones, the Law Enforcement Officers Protection Act of 1985, Pub. L. No. 99-408, (LEOPA) was aimed at safeguarding America's law enforcement officers from the threat of armor piercing handgun ammunition. The Act's sponsor and chief proponent, Rep. Mario Biaggi, stated in a hearing on the bill that "in no way is my legislation aimed at banning rifle ammunition, or the more conventional handgun bullets that are used for hunting and other legitimate purposes. Simply, soft body armor was not designed to stop rifle ammunition which is seldom used in crimes." In order to ensure that the Act did not restrict rifle ammunition or handgun bullets that were not conceived to penetrate police body armor, Congress included a "sporting purposes" exemption in the Act and delegated to the Attorney General the authority to determine which projectiles qualify for it.

Historically, sporting purposes exemptions under LEOPA have been subject to ad hoc, case-by-case determinations. In November 2012, BATFE held meetings with various interested parties and solicited comments in an effort to develop a consistent standard for determining if a projectile should be exempted under the "sporting purposes" provision of the Act. Various stakeholders participated and offered written comments and other input on that proposal. To date, however, BATFE has not publicly clarified their methodology for making "sporting purposes" determinations under LEOPA. Freedom of Information Act requests by NRA and other participants for materials created for, distributed at, and resulting from that meeting have gone unanswered by BATFE.

Surplus 5.45x39 ammunition containing 7N6 projectiles has been imported into the United States for several years without apparent issue or incident. This rifle ammunition provides a cost-effective way for many Americans to exercise the rights protected by the Second Amendment, including by participation in target shooting and rifle training. On April 7, 2014, BATFE issued a "special advisory" indicating that ammunition containing 7N6 projectiles is now considered "armor piercing ammunition" because there is steel in the core of the projectile and because a "commercially available handgun," the "Fabryka Bronie Radom, Model Onyks 89S," could fire ammunition using this projectile. This firearm, however, does not appear to be widely available in the United States, if indeed it is commercially available in the United States at all.

Given these facts, we request answers to the following questions:

12. Will BATFE grant 7N6 projectiles a "sporting purposes" exemption, as it did for 5.56x45 M855 projectiles and 7.62x63 M2AP projectiles?

**Response:**

ATF has not received any exemption requests for the Russian-manufactured 7N6 projectiles. Should ATF receive such an exemption request, ATF will evaluate the request consistent with the statute. Additionally, please note, 5.45x39 cartridges loaded with traditional lead and copper projectiles are not classified as "armor piercing ammunition" and are widely available in the marketplace.

**13. Why is there still no published standard for determining if a projectile meets the "sporting purposes" exemption of LEOPA?**

**Response:**

The primary purpose of the statutory restriction on armor-piercing ammunition is the protection of law enforcement officers. The increased availability of handguns capable of chambering ammunition originally intended for use in rifles is an area of great concern to law enforcement. The requests for exemptions to the statutory definition of "armor piercing ammunition" directly implicate this law enforcement concern. ATF is responsible for ensuring that the sporting purposes exemption is applied in a manner that does not in effect eliminate the statutory restrictions intended to protect law enforcement officers. ATF is taking the time necessary to evaluate each pending exemption request to ensure that resolution adequately reflects the statute's fundamental officer safety goal.

**14. How does BATFE determine when a handgun is sufficiently available so that ammunition in that handgun's caliber will be subject to the provisions of LEOPA?**

**Response:**

The statute does not provide a benchmark for when a handgun is "sufficiently available" so that ammunition in that handgun's caliber will be subject to the provisions of the Law Enforcement Officers Protection Act of 1985 (LEOPA). Rather, the statute defines "armor piercing ammunition" in two ways:

- (1) by reference to composition of a projectile when that projectile (or projectile core) "may be used in a handgun";
- and
- (2) by weight of the jacket of a full-jacketed projectile larger than .22 caliber "designed and intended for use in a handgun."

Given the goal of the statute to protect officer safety, ATF looks to determine whether the projectile at issue either (1) may be used in a handgun that may be obtained in ordinary channels of commercial trade, that is, the handgun is offered for sale to the general public; or (2) was designed or intended for use in such a handgun.

**15. How much ammunition containing 7N6 projectiles has BATFE approved for importation already?**

**Response:**

ATF has no way to know how much of the Russian-made 7N6 ammunition has been imported to date, because prior to March 6, 2014, ATF did not require a certification statement to accompany ATF import permits identifying whether ammunition of this caliber was lead, 7N6 steel core, or comprised of any other metal.

16. Keeping in mind the answer to question number 4, does BATFE claim that 7N6 projectiles are or have been used to defeat police body armor when fired from a handgun and, if not, would this affect any determination it makes on whether such projectiles qualify for a “sporting purposes” exemption?

**Response:**

To ATF’s knowledge, no organization in the United States currently collects data on the ammunition used to defeat police body armor and injure or kill law enforcement officers in the U.S. For this reason, ATF would not be able to reliably use such data or information in its determination process.

17. Why has BATFE not answered the FOIA requests?

**Response:**

As of June 5, 2014, ATF completed the processing of all documents responsive to the Freedom of Information Act (FOIA) request and litigation filed by the National Shooting Sports Foundation (NSSF), a total of 24,831 pages. While processing the documents for the NSSF litigation, ATF contacted the National Rifle Association’s Institute for Legislative Action (NRA/ILA) and the Sunlight Foundation (SF) requesting to postpone delivery of the disclosable documents until after the June 9, 2014 court deadline in the NSSF FOIA litigation. On June 10, 2014, ATF transmitted the same 24,831 pages to the NRA/ILA and SF.

